

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





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**United States Court of Appeals**

For the Second Circuit.

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THE UNITED STATES OF AMERICA,

Appellee,

vs.

SAUL M. KOHN,

Defendant-Appellant.

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**APPELLANT'S APPENDIX**

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*On Appeal From The United States  
District Court For The Eastern  
District Of New York*

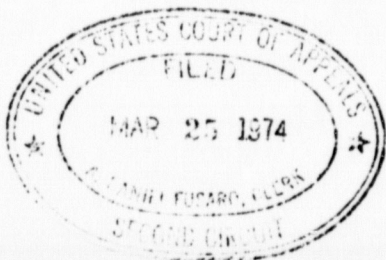
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EASTERN DISTRICT OF NEW YORK

- - - - - X

THE UNITED STATES OF AMERICA,

vs.

SAUL M. KOHN,

73 Cr. 364

Defendant.

- - - - - X

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DOCKET ENTRIES

- - - - - X

SAME TITLE

- - - - - X

Attorneys for U.S.: Asst. Stechel

Attorneys for Defendant: Aaron Schacher, 32 Court  
Street, Brooklyn, N.Y. UL 5-1003

Did Import narcotics not part of cargo on  
aircraft, etc.

4/10/73 - Before Bartels J - Indictment filed.

4/17/73 - Before Costantino J - Case called -  
Deft. present with counsel Aaron Schacher - deft arraigned  
and enters a plea of not guilty - case for trial on May  
21, 1973.

4/17/73 - Notice of Appearance filed.

4/17/73 - Before Costantino J - Case called on  
motion for Bill of Particulars. Motion granted on consent.

4/19/73 - Notice of Readiness for Trial filed.

5/15/73 - Petition for Writ of Habeas Corpus Ad  
Testifandum filed.

5/15/73 - By COSTANTINO, J. - Writ issued, ret.  
5/17/73. (TREVOR A. WALTERS)

5/23/73 - Writ ret'd. and filed - Executed.

6/19/73 - Petition for Writ of Habeas Corpus  
Ad Testificandum filed (T. WALTERS).

6/19/73 - by COSTANTINO, J. - Writ issued, ret.  
6/25/73.



6/25/73 - Before Costantino J - Case called -  
deft & counsel Aaron Sacher present - adjd. to June 26, 1973.

6/26/73 - Before COSTANTINO J - Case called -  
motion to suppress - hearing begun. Both sides rest -  
motion granted and denied as indicated.

6/27/73 - Stenographers transcript dated June  
26, 1973 filed (pgs 1 to 126).

6/27/73 - Before COSTANTINO J - Case called &  
adjd to June 29, 1973 for Trial. Bail continued.

6/27/73 - Stenographers transcript dated June  
27, 1973 filed (pgs 127 to 133a)

6/28/73 - Writ ret'd and filed. Executed.

6/29/73 - Waiver of Jury Trial filed.

2/29/73 - Before COSTANTINO, J. - Case called -  
Atty and counsel present - Waiver of Jury Trial signed -  
Trial ordered and begun - Both sides rest - Decision  
reserved (All papers by 7/23/73)

7/2/73 - Stenographer's transcript of 6/29/73  
filed.

7/7/73 - Govt's Post-Trial Memorandum filed.

11/12/73 - By COSTANTINO J - Memorandum Decision  
filed - court finds the deft. guilty of count 3. Foregoing  
Opinion constitutes findings of fact and conclusions  
of law, in accordance with Rule 23 (c) of the Federal  
Rules of Criminal Procedure.

11/12/73 - Before COSTANTINO J - Case called -  
deft & counsel A. Sacher present - Court finds the deft  
guilty on count 3 - sentence adjd without date - deft  
O.R. (see Findings of Fact of Nov. 12, 1973)

2/1/74 - Before COSTANTINO, - case called -deft  
& counsel KOHN Aaron Schacher present - deft sentenced  
to imprisonment for 3 years - to serve 6 mos. and execu-  
tion of sentence is suspended and the deft is placed on  
probation for the remainder of sentence under 18:3651/  
on count 3 plus special parole term of 5 years. Stay of  
execution granted pending notice of appeal.

2/1/74 - Judgment and Commitment and Order of  
Probation filed - Certified copies to Marshal and Pro-  
bation (KOHN)

2/1/74 - Before COSTANTINO - J - case called  
on bail application - deft Kohn & counsel Aaron Schacher  
present - bail contd. at \$10,000 P.R. Bond.

2/8/74 - Notice of Appeal filed.

2/8/74 - Docket entries and duplicate of Notice  
of Appeal mailed to the C of A.



SUPERSEDING INDICTMENT

- - - - - X

SAME TITLE

- - - - - X

THE GRAND JURY CHARGES:

COSTANTINO, J.

COUNT ONE

On or about the 9th day of February 1973, within the Eastern District of New York and elsewhere, the defendant SAUL M. KOHN and one Trevor Anthony Walters not named herein as a defendant, did knowingly and intentionally import into the United States from a place outside thereof, approximately thirteen (13) pounds of hashish, a Schedule I controlled substance. (Title 21, United States Code, Section 952(a) and Section 960(a)(1) and Title 18, United States Code, Section 2.)

COUNT TWO

On or about the 8th day of February 1973, within the Eastern District of New York and elsewhere, the defendant SAUL M. KOHN and one Trevor Anthony Walters not named herein as a defendant, did knowingly and intentionally possess on board an aircraft arriving in the United States approximately thirteen (13) pounds of hashish, a Schedule I controlled substance, such controlled substance not being a part of the cargo entered in the

manifest and not being a part of the official supplies of such aircraft. (Title 21, United States Code, Section 955 and Section 960(a) (2) and Title 18, United States Code, Section 2.)

COUNT THREE

On or about the 8th day of February 1973, within the Southern District of New York, the defendant SAUL M. KOHN did knowingly and intentionally possess with intent to distribute approximately thirteen (13) pounds of hashish a Schedule I controlled substance. (Title 21, United States Code, Section 841 (a) (1).)

COUNT FOUR

On or about and between the 1st day of January 1972 and the 8th day of February 1973, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant SAUL M. KOHN, and one Trevor Anthony Walters, named herein as a co-conspirator but not as a defendant, and others to the grand jury unknown did knowingly and intentionally conspire to import into the United States from a place outside thereof, a quantity of hashish, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 952(a). (Title 21, United States Code, Section 963).

A TRUE BILL

UNITED STATES ATTORNEY

FOREMAN



MEMORANDUM DECISION

- - - - - X

SAME TITLE

- - - - - X

NOVEMBER 12, 1973

A p p e a r a n c e s :

Hon. Robert A. Morse, U.S. Attorney, E.D.N.Y.,  
by Howard J. Stechel, Esq., Ass't U.S. Attorney

Aaron R. Schacher, Esq., 32 Court Street,  
Brooklyn, New York, for defendant

COSTANTINO, D.J.

This is a criminal prosecution charging defendant Saul M. Kohn with aiding and abetting the importation of hashish, in violation of 21 U.S.C. Sections 952(a), 960(a) (1) (1971) and 18 U.S.C. Section 2 (1971) (count one); aiding and abetting the possession of hashish on board an aircraft arriving in the United States, in violation of 21 U.S.C. Sections 955, 960(a) (2) (1971) and 18 U.S.C. Section 2 (1971) (count two); knowingly and intentionally possessing hashish with intent to distribute, in violation of 21 U.S.C. Section 841(a)(1)(1971) (count three); and conspiracy to import hashish into the

United States in violation of 21 U.S.C. §§ 952(a), 963 (1971) (count four). On June 26, 1973 a hearing was held to determine the disposition of defendant's motion to suppress approximately thirteen pounds of hashish and other articles seized in defendant's apartment by Customs agents on February 8, 1973. Except for the hashish found on a table in the living room and in a closet the motion was granted. Leave was given defendant to renew his motion with regard to the hashish at the conclusion of the trial and submit briefs in its support. Defendant waived a jury trial and the case was tried to the court on June 27 and June 29, 1973. With the agreement of the parties the transcript of the suppression hearing was offered and accepted into evidence at the trial.

The following are the facts adduced at the trial. On February 8, 1973 at about 3:30 p.m. Trevor A. Walters, a British subject, arrived at John F. Kennedy International Airport from Tangiers, Morocco. While going through customs a false bottom to his suitcase was discovered and approximately thirteen pounds of hashish was found. Walters was immediately arrested and questioned by Customs Inspectors. He stated that he had been given a



slip of paper along with the hashish in Tangiers and that the paper contained the name, address and phone number of Saul M. Kohn. He further testified that he had been instructed to deliver the hashish to Kohn and that Kohn would pay him \$2,000 upon delivery. Customs agents drove Walters to their Manhattan office and at approximately 8:00 p.m. Walters dialed the number given him in Morocco. Defendant answered and the conversation was recorded by the agents. All it related was that Walters should go to Kohn's apartment. The conversation indicated that while Kohn and Walters had met previously (later testimony revealed two years earlier), they did not know each other well.

At approximately 9:30 p.m. five agents drove Walters with the suitcase containing the hashish to Kohn's address. Two agents entered the building with Walters and instructed him to leave the suitcase with Kohn, as he originally had intended to do. While they remained hidden in the hallway, Walters was admitted into the apartment. He had a short, general conversation with Kohn about his trip, and then gave Kohn the suitcase. Walters testified that the suitcase had been opened in his presence, that it contained the hashish, that he had asked Kohn if Kohn would

sell the hashish, and that Kohn answered "maybe." Walters then left the apartment, went to the agents, and told them that Kohn was there and that he had left the suitcase with Kohn.

After remaining outside Kohn's apartment for approximately ten minutes, during which time they observed no one entering or leaving, the five Customs agents knocked on the door, and, after identifying themselves, were admitted. As he entered the foyer, Agent Walsh, the first officer to enter the apartment, arrested Kohn for "violating federal narcotics law." No guns were drawn or shown and the entire arrest was peaceably carried out. Walsh advised Kohn of his constitutional rights as they apparently proceeded down a foyer into Kohn's living room. Walsh testified that Kohn said that he understood, saying, "I know what you are talking about." Agent Czujak testified that Kohn said, "Yes, yes, I know my rights. I know the law."

When Walsh and the other agents entered the living room they noticed a small amount of hashish on a table. Asked if it were his, Kohn said yes. The agents



testified that Kohn was quite agitated by the intrusion and delivered a fifteen minute speech about how wrong the laws were. After he calmed down, he was asked by Agents Walsh and Greico where the bag was. He immediately asked the agents if they had a search warrant. Agent Greico ~~said~~ they did not, but explained that the agents had the "right" to get one, and that since it was so late they would have to "secure" the premises, leave a guard, and return with a warrant in the morning. Greico was asked on cross-examination at trial whether he would have gotten a search warrant had Kohn insisted. He answered, "That would be my only recourse." Agent Walsh testified that Kohn then replied, "Well go ahead, do what you want to do." Agent Czujak recalled at trial that Kohn said, "I don't care what you do, just do what you have to do." Similarly, Agent Greico testified that although he could not remember Kohn's exact words, he recalled that "whatever he did say indicated to me that I had, or we had permission to search the apartment." Walsh again asked Kohn where the suitcase was and Kohn pointed to the closet saying, "The bag is in the closet." The suitcase was found in the closet and it contained the hashish.

Defendant asserts that the search of the closet and the seizure of the suitcase, the hashish in the suitcase, and the hashish on the table were illegal. It is clear that the agents had probable cause to arrest defendant and defendant has never questioned this. They knew defendant had in his possession a suitcase containing a substantial amount of hashish. The hashish on the living room table was in plain view of the agents at the time of the arrest and was therefore properly seized. Chimel v. California, 395 U.S. 752 (1969).

The government contends that the search of the closet and the seizure of the suitcase although warrantless were not illegal because the defendant freely and voluntarily consented to them. A search pursuant to a voluntary consent is constitutionally permissible, Vale v. Louisiana, 399 U.S. 30, 35 (1970); Katz v. United States, 389 U.S. 347, 358 (1967), but to sustain a consent search the government has the burden of proving that the consent was "freely and voluntarily" given. Bumper v. North Carolina, 391 U.S. 543, 548 (1968); Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

The uncontradicted testimony of Agents Walsh,



Czujak and Greico concerning defendant's words of consent, coupled with his actions, clearly indicate that Kohn did, in fact, consent. All three agents inferred from Kohn's words that permission to search was being given. More importantly, not only did Kohn not protest the ensuing search, he aided it by pointing to the closet where the suitcase was saying, "The bag is in the closet." The inescapable conclusion must be that while the words as set down in black and white may appear equivocal, their meaning at the time was crystal clear to all present. Had Kohn not meant that the agents were free to search, surely he would have protested. He had previously demonstrated no reticence about speaking his mind to the agents.

Defendant asserts that the consent if given was not "freely" given, arguing that custody is "inherently coercive" and citing Miranda v. Arizona, 384 U.S. 436 (1965). It is true that the government is under a "particularly heavy" burden to show voluntary consent in such circumstances, United States v. Gaines, 441 F.2d 1122, 1123 (2d Cir. 1971); Gorman v. United States, 380 F.2d 158, 163 (1st Cir. 1967). However, "[t]he mere fact that a suspect is under arrest does not negate the possibility of a voluntary consent.

Neither does the suspect's knowledge that the search will almost certainly demonstrate his guilt." United States ex rel. Lundergan v. McMann, 417 F.2d 519, 521 (2d Cir. 1969).

The giving of Miranda warnings is not a requirement in Fourth Amendment cases, United States v. Mapp, 476 F.2d 67, 78 (2d Cir. 1973); Schneckloth v. Bustamonte, 412 U.S. 218 at 246, but they were given here. Additionally, Kohn knew of his right to require a search warrant. He specifically asked whether the agents had a warrant and seemed to fully understand the subsequent conversation about the agents getting one.

This court, having observed the demeanor of the agents at trial, and in light of their consistent and uncontroverted testimony, gives credence to their version of what occurred on the evening of February 8, 1973. It is satisfied that the government has shown, by clear and convincing evidence, that no coercion was used to obtain Kohn's consent and that consent was freely and voluntarily given. Accordingly, defendant's motion to suppress the hashish found in the closet is denied.

Defendant has raised the defense of entrapment,



claiming that the behavior of the government has fallen below acceptable standards. He cites Sherman v. United States, 356 U.S. 369 (1958) and asserts that Walters was "programmed" by the government. The facts, however, in no way indicate that the criminal conduct was "the product of the creative activity" of law enforcement officials. Sherman v. United States, supra at 372; Sorrells v. United States, 287 U.S. 435 (1932). The fact that government agents aid the commission of an offense by providing facilities does not constitute entrapment. Sorrells v. United States, supra at 441. The name of Kohn had been given to Walters not by the Customs agents but by the person in Morocco who gave him the hashish. Kohn himself told Walters over the telephone to come to his apartment. The only facility that the agents provided was the transportation from the airport to Kohn's apartment. Kohn therefore has not sustained his burden of proof as to the defense of entrapment. United States v. Viviano, 437 F.2d 295, 298 (2d Cir. 1971).

Upon consideration of the trial record this court finds that the evidence is insufficient to convict defendant on counts one, two and four. There is no evidence other than the piece of paper given to Walters in Morocco

linking Kohn to the importation of the hashish, and that evidence is insufficient to convict defendant on the aiding and abetting or the conspiracy to import charges. Accordingly, the defendant is found not guilty of counts one, two and four.

The evidence on count three, however, requires a different conclusion. There is no question that defendant possessed approximately thirteen pounds of hashish. The only real question is whether he possessed it with intent to distribute, as is required by 21 U.S.C. § 841(a) (1971). The testimony of Walters that Kohn said "maybe" he could sell it, in addition to the circumstances surrounding Walters' being given Kohn's name and address, and the quantity of hashish involved, all combine to prove that Kohn did intend to distribute the hashish. Walters' testimony that the supplier in Morocco gave him the hashish, Kohn's name, address and phone number, and promised him that Kohn would pay him upon delivery in New York, is circumstantial evidence that Kohn was the selling outlet for illicit drugs. The fact that Kohn invited Walters to go to his apartment after being told by Walters that he had come from Morocco, while equivocal on its face, buttresses this conclusion when




considered in conjunction with the other evidence.

The quantity of hashish involved, approximately thirteen pounds, is further evidence of Kohn's intent to distribute. The court infers from the amount involved that the hashish was not to be used for his personal use, but rather was intended for distribution. United States v. Mather, 465 F.2d 1035, 1037-38 (5th Cir. 1972), cert. denied 409 U.S. 1085 (1972); United States v. Gonzalez, 442 F.2d 698, 701 (en banc) (2d Cir. 1971), cert. denied 404 U.S. 845 (1971); United States v. Contreras, 446 F.2d 940 (2d Cir. 1971); Turner v. United States, 396 U.S. 398, 423 (1970). In Mather, the Fifth Circuit, in considering 21 U.S.C. § 841 (a), upheld a lower court's finding of intent to distribute based upon an inference drawn from the quantity possessed. Such an inference surely meets the test of Barnes v. United States, 41 U.S.L.W. 4917, 4919 (June 18, 1973). The Supreme Court in that case held that an inference which meets the reasonable doubt standard satisfies the requirements of due process.

The court finds that all the evidence adduced at trial supports a finding, beyond a reasonable doubt, that

defendant possessed the hashish with intent to distribute. Accordingly the court finds the defendant guilty of count three of the indictment.

The foregoing opinion constitutes findings of fact and conclusions of law, in accordance with Rule 23(c) of the Federal Rules of Criminal Procedure.



U. S. D. J.



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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, :  
-against- :  
SAUL M. KOHN, :  
Defendant. :  
-----X

73CR364

United States Courthouse  
Brooklyn, New York

June 26, 1973  
10:25 o'clock a.m.

B e f o r e:

HONORABLE MARK A. COSTANTINO, U.S.D.J.

GENE RUDOLPH  
OFFICIAL COURT REPORTER

Appearances:

ROBERT A. MORSE, ESQ.,  
United States Attorney  
for the Eastern District of New York

BY: HOWARD J. STECHER, ESQ.,  
Assistant United States Attorney

AARON R. SCHACHER, ESQ.,  
Attorney for defendant

---



1  
2 THE CLERK: Criminal cause for trial, U.S.A.  
3 versus Saul M. Kohn.

4 MR. SCHACHER: Good morning, your Honor.

5 THE COURT: Good morning.

6 Are you ready, sir?

7 MR. SCHACHER: Yes, your Honor.

8 THE COURT: All right.

9 MR. STECHEL: The Government is ready.

10 THE COURT: Ready. Let's have our  
11 hearing.

12 MR. SCHACHER: Sir?

13 THE COURT: What's so shocking about that?

14 MR. SCHACHER: I didn't hear what your  
15 Honor said.

16 THE COURT: I said "Let's have our hearing."

17 MR. SCHACHER: Fine.

18 THE COURT: Oh.

19 MR. STECHEL: Can we proceed, your Honor?

20 THE COURT: Sure.

21 MR. STECHEL: Okay.

22 THE COURT: That's what I'm doing here.

23 How many witnesses do you have?

24 MR. STECHEL: About three or four witnesses.

25 THE COURT: That's enough.

1  
2 MR. STECHEL: Yes. On the hearing.

3 The United States calls Trevor Anthony  
4 Walters.

5 MR. SCHACHER: Your Honor, may I be  
6 permitted to sit over here?

7 THE COURT: Absolutely. If you can't  
8 hear, you may sit over there, too. Do you  
9 want to sit there?

10 MR. SCHACHER: This is fine, Judge.

11 T R E V O R   A N T H O N Y   W A L T E R S , called as  
12 a witness, having been first duly sworn by  
13 the Clerk of the Court, was examined and  
14 testified as follows:

15 MR. SCHACHER: May I move for the exclusion  
16 of any and all witnesses in the courtroom, your  
17 Honor?

18 THE COURT: Yes. Any witnesses on this  
19 hearing please remove yourself from the courtroom.

20 MR. STECHEL: Other than the agents. The  
21 agent in charge.

22 THE COURT: The agent is permitted to stay.

23 MR. SCHACHER: May I most respectfully take  
24 an exception to that, your Honor?

25 THE COURT: What's that?



1  
2 MR. SCHACHER: May I most respectfully  
3 take an exception to that?

4 THE COURT: Sure.

5 MR. STECHEL: Your Honor, I'll dispense  
6 with citing the numerous cases that support your  
7 Honor's ruling on permitting the agent.

8 MR. SCHACHER: You never know when the  
9 Supreme Court may change their opinion, your  
10 Honor.

11 THE COURT: Any morning. They just  
12 closed all the Catholic schools.

13 MR. SCHACHER: That's what I am talking  
14 about, Judge.

15 THE COURT: All right.

16 DIRECT EXAMINATION

17 BY MR. STECHEL:

18 Q Mr. Walters, of what nation are you a citizen?

19 A Great Britain.

20 Q And how old are you?

21 A 31.

22 Q What is your occupation?

23 A Record producer.

24 Q Now, did you recently make a trip to the United  
25 States?

1  
2 A I did.

3 Q Was that on February 8, 1973?

4 A It was.

5 Q And from where did you arrive?

6 A From Tangier, Morocco.

7 Q I see.

8 How did you arrive here?

9 MR. SCHACHER: Your Honor, may I please  
10 ask the Assistant U.S. Attorney to speak a little  
11 bit slower in asking his questions?

12 To ask his questions at a slower pace?

13 THE COURT: We have to be a little faster,  
14 because it's late and at eleven o'clock we have  
15 a jury coming in.

16 MR. SCHACHER: I know. What time are they  
17 coming in?

18 THE COURT: Eleven o'clock.

19 MR. SCHACHER: I don't think we'll be through  
20 by that time.

21 THE COURT: We might be.

22 All right, go ahead.

23 BY MR STECHEL:

24 Q How did you arrive here?

25 A By plane.



1  
2 MR. STECHSEL: Please mark for identification  
3 the passport. Can we mark all four of these  
4 documents for identification, please?

5 THE CLERK: Documents marked for identification  
6 as Government's Exhibits 1 through 4.

7 (So marked.)

8 Q Mr. Walters, will you please look at Government  
9 Exhibit 1 for identification? Do you recognize that?

10 A Yes. That's my passport.

11 Q Did you carry that passport here with you when  
12 you arrived in the United States?

13 A I did.

14 Q And do you recognize Government Exhibit 4 for  
15 identification?

16 A Yes.

17 Q What do you recognize it as?

18 A It's my customs form.

19 Q Your signature --

20 MR. SCHACHER: I didn't hear the answer.

21 THE COURT: You have to talk louder.

22 THE WITNESS: That's my customs form. The  
23 customs list that I filled in when I arrived.

24 Q I see.

25 And would you please look at Government Exhibit 2 for

1  
2 identification?

3 A That's my ticket.

4 Q Where did you arrive? What airport did you  
5 arrive at?

6 A Kennedy Airport.

7 Q I see.

8 Did you carry Government's Exhibits 1 and 2 and 4 with  
9 you into the United States, when you arrived here?

10 A I did.

11 Q And did you present the passport for Immigration?

12 A Yes.

13 Q And did you carry this airline ticket with you?

14 A Yes. That was in my bag.

15 Q And did you present Government Exhibit 4 for  
16 identification at the Customs belt?

17 A Yes.

18 MR. STECHEL: I offer Government's Exhibits  
19 1, 2 and 4 in evidence.

20 MR. SCHACHER: I have no objections, your  
21 Honor.

22 THE COURT: All right, mark them. They are  
23 in evidence.

24 THE CLERK: Government's Exhibits 1, 2 and 4  
25 previously marked for identification marked in  
evidence.



(So marked.)

MR. STECHEL: Thank you.

Q Mr. Walters, will you please look at Government  
3 for identification? Do you recognize that piece of paper?

A Yes.

Q Where did you get that piece of paper?

A It's a piece of paper that was given to me in Tangiers.

Q In Morocco?

A Yes.

Q Approximately how long before you arrived here  
was that piece of paper given to you?

A Two days.

Q I see.

Whom did you get the piece of paper from?

MR. SCHACHER: Objection, your \_Honor.

THE COURT: Yes.

MR. STECHEL: Let me offer it in evidence,  
then. Did you -- all right. I offer it in evidence.

THE COURT: Offer it in evidence.

MR. SCHACHER: May I please see it?

MR. STECHEL: Surely.

MR. SCHACHER: May I have one moment please,  
your Honor.

THE COURT: Of course.

1  
2 MR. SCHACHER: No objection, your Honor,  
3 with the exception of one portion, your Honor.  
4 I'd like to have the pencilled notation blotched  
5 out or covered up or something.

6 THE COURT: Not right now.

7 MR. STECHEL: There is a pencil marking  
8 beneath the --

9 THE COURT: Is that all it is, a pencil  
10 mark?

11 MR. SCHACHER: Yes. It can be erased.  
12 I don't care. Whatever the Court sees fit.

13 THE COURT: This here (indicating)?  
14 All right.

15 MR. SCHACHER: EX-16, your Honor.

16 THE COURT: Yes. I see it.

17 MR. STECHEL: That was added on.

18 THE COURT: All right. We can cover that.

19 MR. STECHEL: I offer it in evidence.

20 THE CLERK: Government's Exhibit 3, previously  
21 marked for identification, marked in evidence.

22 (So marked.)

23 BY MR. STECHEL:

24 Q Would you please, Mr. Walters, tell us from  
25 whom you received the Government Exhibit 3 in evidence?



1  
2 MR. SCHACHER: I objected to that before,  
3 your Honor. I was sustained on it.

4 THE COURT: No. I will allow it.

5 A From an acquaintance of mine, who I knew by the name  
6 of Michael.

7 Q I see. And what were the circumstances?

8 MR. SCHACHER: Objection, your Honor.

9 THE COURT: Where did you receive it? Where  
10 did you receive that?

11 THE WITNESS: I received this in Morocco.

12 Q Did Mike tell you anything when he gave it to you?

13 A He said it was --

14 MR. SCHACHER: May I object, your Honor?

15 MR. STECHEL: Your Honor, if I may?

16 THE COURT: As a result of the conversation,  
17 did he give you that piece of paper?

18 THE WITNESS: As a result, yes, he did.

19 THE COURT: Were you supposed to do something  
20 with that piece of paper?

21 THE WITNESS: This was an address.

22 THE COURT: An address?

23 THE WITNESS: He gave me.

24 BY MR. STECHEL:

25 Q An address for what purpose?

1  
2 MR. SCHACHER: Objection, your Honor.

3 Q What were you told?

4 MR. SCHACHER: Objection to that, your  
5 Honor.

6 THE COURT: As a result of the conversation,  
7 were you supposed to do something at that address?

8 THE WITNESS: I was supposed to contact  
9 somebody at this address.

10 THE COURT: All right.

11 Q Did you carry any luggage into the United States?

12 A I did, yes.

13 (Continued on next page.)  
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G. P.  
1. MR2

Walters - direct

MR. STECHEL: I'd like to mark for  
identification two pieces of luggage.

THE CLERK: Two articles marked for  
identification as Government's Exhibits 5 and 6.

(So marked.)

BY MR. STECHEL:

Q I'm showing you Government's Exhibits 6 and 7.

THE COURT: 5 and 6.

Q I'm sorry. This is marked 7.

THE COURT: Did you put 7 on there?

THE CLERK: I'm sorry. That's a 6.

MR. STECHEL: I'm sorry. Excuse me.

THE COURT: All right.

Q (Continuing) -- 5 and 6 for Identification.

You can step down and look at it. Do you  
recognize it?

A Yes.

Q What do you recognize it as?

A That's my luggage.

Q Is this the --

A Yes. There was one other suitcase.

Q Pardon me?

A There was one other suitcase or two suitcases.

Q Did you carry both of these pieces into the



2 Walters - direct

United States?

A I did.

Q I see. Now, did you know you were carrying any contraband into the United States?

MR. SCHACHER: Objection, your Honor.

THE COURT: Sustained. Bad question.

Q Well, what was in your luggage --

MR. SCHACHER: Objection, your Honor.

THE COURT: No. I think you had better first have, did there come a time when he got to Customs. Is that where he was?

MR. STECHEL: Correct.

THE COURT: All right.

Q Well, what happened when you arrived in the United States at Customs?

A When I arrived at Customs, my bags were opened and it was just opened and they were cut, and through being cut, they discovered to have hashish in the bottom.

Q Are these the two pieces of luggage you carried in?

A They are.

MR. STECHEL: I offer these two items into evidence, 5 and 6.

THE COURT: All right.

THE CLERK: Government's Exhibits 5 and 6 previously marked for identification, marked in evidence.

(So marked.)

BY MR. STECHEL:

Q Did you pack the luggage, these two items of luggage in Morocco?

A Yes.

Q What did you put in there?

MR. SCHACHER: Objection, your Honor.

THE COURT: I will allow it.

What did you put in?

THE WITNESS: Clothes. I just put my clothes in.

Q Was anything else put in there, to your knowledge?

A I beg your pardon?

Q Was anything else put in your luggage, to your knowledge?

A No. There was hashish put in the suitcases. I put my clothes in the luggage.

Q By whom was the hashish put in?

MR. SCHACHER: Objection, your Honor.

MR. STECHEL: It's his -- he's a direct



4

Walters - direct

witness to this event.

MR. SCHACHER: There is no proof that he was a direct witness to the event. All he says is he packed his clothes.

THE COURT: Let's get to it.

MR. STECHEL: I'm asking.

THE WITNESS: I wasn't there at the time that the hashish was put into the suitcase.

MR. SCHACHER: I have an objection, your Honor.

THE COURT: You were not there?

THE WITNESS: No.

THE COURT: All right. He said he was not there.

BY MR. STECHEL:

Q Now, did you have a conversation with this Michael concerning any contraband be put in your luggage?

MR. SCHACHER: Your Honor, at this time I'm going to object to the use of the word "contraband."

The witness has not seen anything of that nature put into his luggage.

MR. STECHEL: Your Honor, I think, first of all, this is a conspiracy we are proving



5

Walters - direct

and it is admissible subject to connection in  
furtherance of the conspiracy and the --

THE COURT: It's a question of conspiracy.

MR. SCHACHER: I still most respectfully  
object.

THE COURT: Strictly a substantive action.

BY MR. STECHEL:

Q Did you have a conversation with Michael  
concerning -- Mike -- concerning hashish?

A Yes.

Q All right. What was the conversation?

A I was aware that there was -- was hashish in the  
suitcase.

Q I see. Were you being paid for carrying this  
into the United States?

A I was.

Q How much were you to be paid?

A \$2,000.

Q I see. And for what were you being paid, to  
do what?

MR. SCHACHER: Objection, your Honor.

He already gave the answer to the question  
put to him.

Q What were you told you were supposed to do

6 Walters - direct

to earn --

MR. SCHACHER: I object to what he was told,  
your Honor.

THE COURT: I will allow it.

MR. SCHACHER: Respectfully except.

THE COURT: Go ahead.

THE WITNESS: To bring it into the  
United States. To bring the hashish into the  
United States.

Q And were you told in order to earn this  
\$2,000 to whom you were to deliver this in the United States,  
if anyone?

MR. SCHACHER: I object on the grounds  
it is leading, sir.

THE COURT: Yes.

Q What was -- just explain what your role was  
to be and --

THE COURT: Tell us after you got your bags  
and tell us the fully story, in your own words,  
what you were to do. That's all.

THE WITNESS: As soon as I got the bags,  
I had an airline ticket. I was to come to the  
United States and I was to get in contact with  
this person here. I had nowhere to stay and I



7

Walters - direct

was under the impression that this person --

THE COURT: No. Don't say your impression.

What were you to do?

THE WITNESS: I was told to come to the United States and contact this person and at a later date I would get my money.

BY MR. STECHEL:

Q All right. Now, what happened at Kennedy Airport, do you recall? What happened, did you -- what happened at the airport?

A Well, Kennedy Airport, coming through the Customs, my bags were heavy and so on. My bags were opened, cut inside and hashish was discovered.

MR. SCHACHER: Your Honor, I don't like to interrupt so often --

THE COURT: Why don't you get down and show us what you are talking about.

MR. SCHACHER: May I also have the Court instruct this witness, it's awfully hard to understand his accent and to speak a little bit louder and a little bit slower, your Honor.

THE WITNESS: Okay.

THE COURT: All right.

Q What happened at the airport?



8 Walters - direct

2 A Well, I arrived at Kennedy Airport. I went through  
3 Immigration all right. I went to the Customs when my bags  
4 were opened in the Customs, to the Customs official. They  
5 felt heavy and so on and my bags were cut with a knife.  
6 Through being cut with a knife, the hashish started to  
7 fall through.

8 At that moment I was taken by the Customs agents  
9 into their office.

10 Q Were you placed under arrest?

11 A Yes, I was.

12 Q Did you have conversations with the Customs  
13 agents at that time?

14 A Not really. Just my particulars, where I was  
15 coming from, my name, address.

16 Q Did you thereafter have conversations with  
17 the Customs agents concerning this importation of hashish?

18 A I did.

19 Q I see. Did you reach any agreement with  
20 them?

21 MR. SCHACHER: May I know when and where  
22 this conversation took place, your Honor?

23 Q When and where?

24 A At the Kennedy Airport and at the Customs office  
25 in Manhattan. I don't know the address.

9 Walters - direct

Q I see. Did you thereafter make any phone call in the Customs office?

A I did make a phone call to the Customs office.

Q And whom did you call?

A I called the person at this address.

Q I see. Did you hear another voice speaking to you on the telephone?

A I did.

MR. STECHEL: Your Honor, I want to play a tape, put this in the record, at the hearing.

MR. SCHACHER: Your Honor, at this time I am going to object upon the ground that no proper foundation has been laid or lain for the introduction of this tape recording.

MR. STECHEL: I can --

THE COURT: Better lay a foundation.

BY MR. STECHEL:

Q What happened when you made this phone call? Explain in all the details, what you recall about this phone call.

A When I was at the Customs office, I was asked if I would make a phone call to this person on this address.

Q What name was that?



10 Walters - direct

A It's Saul Kohn.

Q All right.

A Which I did make the telephone call.

Q I see. During this telephone call, did you use the name Saul --

MR. SCHACHER: I object to that, your Honor --

THE COURT: I will allow it.

MR. SCHACHER: (Continuing) -- as being leading in every respect, your Honor.

THE COURT: That's that?

MR. SCHACHER: I respectfully make an objection to the question asked upon the ground that it is very leading.

THE COURT: I didn't get the last word. I don't know what you are saying.

MR. SCHACHER: Leading.

THE COURT: Leading, oh. I was wondering what you said.

No. I will allow it. Go ahead.

MR. SCHACHER: Respectfully except.

THE WITNESS: Yes. I did mention a Saul.

BY MR. STECHER:

Q And did you mention your own name?



11 Walters - direct

A My first name, yes.

Q And had you previously ever known a Saul Kohn?

MR. SCHACHTER: May I at this time, your Honor, have a continuing objection to all the questions asked by Mr. Stechel?

THE COURT: Yes.

MR. STECHEL: Would you read the last question?

(Question read.)

THE WITNESS: I had met him once before.

BY MR. STECHEL:

Q Where was that?

A In Europe.

Q After you identified yourself -- did you identify yourself on the phone to this individual on the other side of the telephone?

A I did.

Q He then identified himself?

A Yes.

Q Whom did he say he was?

A I asked him -- "Is Saul there?" And he said, yes, he was speaking.

Q And did you say who you were?

A I did.

12 Walters - direct

Q What did he say?

A He said he couldn't remember me, when I'd met him previously. It was only very briefly and we didn't -- you know, we're not friends, close friends or anything. Just passing acquaintances. I don't think he knew who I was initially.

Q Let me ask you this, Mr. Walters.

Beneath the writing, the name and address on that piece of paper, Government Exhibit 3, is there any writing beneath that?

A Beneath which?

Q Beneath the address.

A This -- the little bit in pencil, you mean?

Q No, no. In pen.

A Oh, the telephone number?

Q Well, read off, what are the symbols you see there?

A Tor. 5-2737.

Q All right. Is that the telephone number you called before you spoke to this individual?

MR. SCHACHER: May I object, your Honor?

THE COURT: What are you objecting to?

Is that what you dialed?

THE WITNESS: As far as I can recollect,



13

Walters - direct

that's what I dialed. I don't recognize the number, but as far as I can recollect.

MR. STECHEL: Your Honor, at this time I would offer to play for the Court this tape recording. I don't see what more foundation would be necessary at this point.

THE COURT: I think it is admissible at this point.

MR. SCHACHER: I respectfully object, your Honor.

THE COURT: I will allow it. One of the participants.

MR. SCHACHER: May I have a voir dire, your Honor?

THE COURT: If you want to.

## VOIR DIRE EXAMINATION

BY MR. SCHACHER:

Q May I have that piece of paper, sir?

Mr. Walters, when you made the telephone call, did you ever prior to making that telephone call speak with the person who answered that telephone on the telephone at any time?

A No, sir.

Q How long a time had elapsed from your conversation



14 Walters - voir dire

with a Saul Kohn which you claim took place in Europe,  
from the time you made this phone call here in New York?

A Possibly two years. It wasn't a conversation.  
Just, "Hello, how are you?"

Q And during that period of two years, at no  
time did you engage in a conversation with a person known  
as Saul Kohn; is that correct?

A That's correct.

Q When you -- now, prior to making this  
telephone call, you were instructed by the agent what  
you were to say, were you not?

A Yes.

Q And how long were you in the custody of the  
agents prior to making this telephone call?

A It's hard to say. Maybe two hours. Something of  
that order.

Q Now, what time were you placed in the custody  
of the agents, sir?

A Approximately 4:00 -- 4:30, I believe, p.m.

Q About 4:00 -- at the time you were arrested;  
is that correct, sir?

A I believe so.

Q And you say this telephone call was made some  
two hours later?

15 Walters - voir dire

2 A Maybe longer.

3 Q You are not certain of that, are you?

4 A I am not certain, no.

5 Q What did the agents tell you, prior to  
6 making this telephone call?

7 A They asked me to make the telephone call, asked  
8 me to establish whether he was there and whether he would  
9 be there and whether he'd be there if I went down to visit  
10 him.

11 Q And all during this period of time that they  
12 told you what to do, who had the narcotics?

13 I will withdraw the question.

14 During that period of --

15 THE COURT: That's not the voir dire.

16 This is the tape only.

17 MR. SCHACHER: I withdraw the question,  
18 your Honor.

19 THE COURT: Let's not try the case again.

20 MR. SCHACHER: No, I won't do that, Judge.

21 THE COURT: All right.

22 MR. SCHACHER: That's why I called myself  
23 back in time, sir.



Walters-voir dire

28

Q Now, what else did the agents tell you to do when you made the phone call?

A That's all. Nothing else.

Q At this time you were under arrest; is that correct?

A That's correct.

Q And were any promises made to you for making this telephone call?

A No, I was told initially that if I did cooperate -- if I did tell the truth, then it would be --

Q To your benefit?

A Yes.

Q You would get a break from the Government, right?

A Well, obviously --

Q You understood that to be a fact?

A Yes, I did.

MR. SCHACHER: I still maintain that no foundation has been laid for the introduction of this tape recording or this taping into evidence.

THE COURT: I will allow it on the basis that that is the number he said he called. If it is not the person, then that ends the



1  
2 case.

3 MR. SCHACHER: May I have a side bar  
4 conference with Mr. Stechel?

5 THE COURT: Come up.

6 (The following transpired at the side.  
7 bar.)

8 MR. SCHACHER: Your Honor, it is my  
9 contention that the statement that they are  
10 going to play here, which I have received a  
11 copy of, is neither an admission or confession.

12 THE COURT: I haven't heard it.

13 MR. SCHACHER: I ask the Court, prior to  
14 having it played, that the Court look at the  
15 transcript of it.

16 MR. STECHEL: This is part of the whole  
17 res gestae of the crime.

18 This man a couple of hours later, went  
19 into there and delivered hashish. I couldn't  
20 imagine anything more relevant.

21 THE COURT: He is a participant. He has  
22 a right to play it.

23 MR. SCHACHER: Maybe I'm a funny man,  
24 but I do not think this is funny. I think this  
25 is very serious.

Walters-voir dire

30

THE COURT: This is not an illegal eavesdropping.

MR. SCHACHER: Under Williams against White, I'm aware of it.

THE COURT: I cannot tell unless I hear it.

(The following transpired in open court.)

(Tape played.)

MR. STECHEL: The Government offers in evidence the substance of the tape recording.

THE COURT: Yes.

MR. SCHACHER: I am going to object. There is no proof that the voice on the other end was that of Mr. Sol Kohn.

THE COURT: Subject to connection, I will take it.

DIRECT EXAMINATION

BY MR. STECHEL: (continued)

Q Was this tape recording the phone call you referred to at customs headquarters that you made?

A Yes.

Q After that, what happened?

A After that I was driven by agents to the address, and went up to the apartment with my suitcases.



2 Q Which suitcase?

3 A These -- (indicating).

4 Q Would you look at number 6 and its contents.  
5 Is that the suitcase that you carried into  
6 the apartment?

7 A Yes.

8 Q Would you look at the contents, please?

9 As far as you can say, was that the contents  
10 that you carried into the apartment in that suitcase?

11 A So far as I can say, yes.

12 MR. STECHER: Does the Court wish to  
13 look at it?

14 THE COURT: No.

15 Q Now, Mr. Walters, will you please tell the  
16 Court what occurred at the apartment?

17 A I went in and we said, "hello."

18 Q Who said hello?

19 A Mr. Kohn.

20 Q Do you see the gentleman that said hello to  
21 you in the apartment in the courtroom?

22 A Yes.

23 Q Will you please point him out, if  
24 you see him?

25 A He is sitting over there to my right (indicating.)



MR. STECHEL: Would you stand up, please?

(Mr. Kohn stands.)

Q Is the gentleman standing up the gentleman you are speaking of?

A Yes.

MR. STECHEL: Indicating the defendant, Mr. Schacher?

MR. SCHACHER: I will concede that is Mr. Kohn.

THE COURT: All right.

Q Was there a conversation with Mr. Kohn at that time?

A There was.

Q Will you tell us what the conversation was?

A Well, it was really a loose conversation, just that I was tired, and how was he --

MR. SCHACHER: I can't understand this witness, your Honor.

THE COURT: Come over here.

MR. SCHACHER: If he would speak up louder and a little bit slower, I may be able to make out what he is saying. I am not that worldly that I understand every accent.

THE WITNESS: The conversation was an

1  
2 ordinary one. I asked him how he was, and so  
3 on, and I told him that I was tired, that I  
4 had been travelling a long time and I wanted  
5 to go and rest. I was only in the apartment  
6 for maybe 15 minutes.

7 Q Did you give Mr. Kohn anything while you  
8 were there?

9 A I brought the suitcases with me and put the  
10 suitcases on the floor.

11 Q Did you leave any particular suitcase there?

12 A Yes, the suitcase which I took.

13 Q The suitcase containing --

14 MR. SCHACHER: I object to that, your  
15 Honor.

16 Q Government's exhibit 6; is that correct ?

17 A Yes.

18 Q Am I correct that you brought this Government's  
19 exhibit 6 into the apartment and left without it; is that  
20 correct?

21 A That's correct.

22 Q Did you have a conversation when you gave  
23 that to him?

24 MR. SCHACHER: I object to this as  
25 leading. You could ask what happened.



Walters - direct

34

THE COURT: Did you have a conversation?

THE WITNESS: Yes, I had a conversation.

THE COURT: What was it about?

THE WITNESS: I said, I just come from Morocco, I brought some -- I brought my suitcase and the hashish is in the suitcase, and was there any way that he could sell it.

Q Go ahead.

A He said, maybe -- maybe he could sell it.

Q I see.

Was the suitcase opened at any time while you were in the apartment?

A Yes, it was.

Q Who opened it?

A I can't remember whether I opened it or the gentleman opened it.

Q Was it opened in the presence of Mr. Kohn --

MR. SCHACHER: Objection. He doesn't know who opened it, your Honor.

THE COURT: He is not asking him that.

Was it opened in the presence of Mr. Kohn?

THE WITNESS: It was.

Q Do you recall whether or not anything was

removed from that suitcase, Government's exhibit 6?

A I don't recall whether anything was removed.

Q What happened after that?

A After that -- after 5 or 10 minutes, I got up and left.

Q What did you do after you left?

A After I left, when I got downstairs, I was escorted by the agents back to the customs building.

Q Did you have a conversation with agents after you left the apartment concerning what had happened in the apartment?

A I told them that I had been up there and left the suitcase there, and he was, in fact, in the apartment.

Q Did you tell the agents that Mr. Kohn was in the apartment?

A I did.

Q Did you tell them that the suitcase you brought, you had left there?

A Yes.

Q Do you recall telling them whether the suitcase was opened, during your stay there --

MR. SCHACHER: I object to the form of the question as highly leading.

THE COURT: Yes.



Q Tell us what else you recall telling the agents after leaving the apartment.

A That's actually what I told them.

Q Namely what?

A Namely that he was there and I left the suitcase there.

Q All right.

What happened after that -- after you had the conversation with the agents, after leaving the apartment?

A Then I was driven back to the customs department and from there to West Street.

MR. STECHEL: I have no further questions.

THE COURT: You may examine .

MR. SCHACHER: Thank you, your Honor.

CROSS EXAMINATION

BY MR. SCHACHER:

Q Mr. Walters, when you arrived at Kennedy Airport, you went through customs; is that correct?

A That's correct.

Q And something happened as you were going through customs; is that right?

A That's correct.

Q As you were going through customs something in your bag was leaking out?

A No, there was a smell of glue, I believe.

Q And because of that odor, one of the agents made a more thorough search of your luggage?

A Yes, felt the suitcases, and they were heavy.

Q As they made the search, they found something inside one of the pieces of luggage, correct?

A Correct.

Q And they placed you under arrest; is that right?

A Correct.

Q At that particular time when they placed you under arrest, did you tell them that this drug or merchandise was for anyone?

A Not at that particular time, no.

Q It was only after they found the piece of paper in your possession, right?

A That's right .

Q How long was that after you were placed under arrest?

A Oh, maybe half an hour, three-quarters of an hour.

Q During the time that you were first placed under arrest, until the time that they found that piece of paper, were the agents in any way talking to you or saying anything to you?

A Yes, you know, the usual questions --



Q I do not know, I was never stopped by an agent.

A This was my first time.

Q Sir?

A This is only my first time.  
Just my name, my address, where I was coming from.

Q Did they tell you that you were in serious trouble?

A Yes.

Q What did they say to you about that?

A They told me I was facing five years and maybe more.

(continued on the next page.)

CROSS-EXAMINATION

BY MR. SCHACHER: (Cont.)

Q You heard the word "five years" you became frightened?

A Worried.

Q And frightened and scared?

A Not scared.

Q Were you prison before?

A No.

Q Were you told that you would be facing five years in jail?

A Yes.

Q Didn't that frighten or scare you?

A It worried me.

Q That's all it did to you?

A IT worried me a great deal.

Q On the verge of being frightened, right?

A Yes.

Q And they also told you that you could help yourself if you cooperated with them, did they not?

A They did.

Q What were the exact words that they used that you can remember, sir?

A I can't actually remember the exact words.



2 Walters - cross

Q Give us to the best of your ability approximately what you thought or felt they said to you about that issue?

A Well, they said if I cooperated -- if I made this telephone call and went through with the delivery then it would be cooperation and that would help me a great deal. That's all I can remember.

Q When you went to MR. Kohn's apartment, how many agents did you go there with?

A Two automobiles full.

Q How many agents were in these two automobiles full?

A Well, to guess, I would say four -- sorry, six or seven.

Q Six or seven agents accompanied you to the apartment where Mr. Kohn lived; right?

A I believe so, yes.

Q And when you went inside the apartment, did they go inside with you?

A No.

Q Where did they remain?

A Two remained in the hall -- at the end of the hall.

Q Which hallway was that, the floor that Mr. Kohn lived on or some other floor?

3 Walters - cross

A On the floor that Mr. Kohn lives on.

Q You went inside?

A Yes.

Q When you went inside you had the smaller suitcase?

A Yes.

Q When you were apprehended at Kennedy did they take that away from you?

A Yes.

Q How long a period of time had elapsed from the time you were arrested at Kennedy Airport to the time you got back the suitcase from the agents containing the narcotics?

A Two hours, maybe.

Q During that period of two hours they had in it in their complete custody, right?

A Yes.

Q You at no time had your hands on it?

A Correct.

Q Were you at any time allowed to see the bag that they took away from you?

A Only just before I left in order to go to the apartment.

Q When you went to the apartment of Mr. Kohn, you



1                   4                   Walters - cross

2                   were in custody of agents, right?

3                   A            I was.

4                   Q            Who carried the suitcase from the agents'  
5                   office into the car?

6                   A            I did.

7                   Q            With their being present?

8                   A            YES.

9                   Q            When you got out of the car going into the  
10                  house they also escorted you into the house; is that  
11                  correct?

12                  A            That's correct.

13                  Q            Until you got to the floor where Mr. Kohn  
14                  lived on?

15                  A            Correct.

16                  Q            Then they observed you going to his apartment,  
17                  right?

18                  A            That's true, yes.

19                  Q            Now, when you went into the apartment, what  
20                  happened?

21                  A            Well, I rang the bell --

22                  Q            I withdraw the question.

23                                Did' you have any type of electrical equipment  
24                  on you when you went into the apartment?

25                  A            I did not.

5 Walters - cross

Q Did you have any transmitter of any kind on you?

A No, sir.

Q Did you have any type of electrical appliances on your person when you were engaging Mr. Kohn in conversation?

A No.

Q Do you know whether or not any of the agents had any type of equipment on them when you went into the apartment?

A I don't think they did. They had walkie-talkie equipment outside.

Q Do you know whether any of that equipment transcended into the apartment of Mr. Kohn?

A No.

Q Were you told that they would pick up the conversation that you and Mr. Kohn had?

A No.

Q Continue --

A Beg your pardon?

Q What happened when you got into the apartment?

A We exchanged greetings, I told him that I just arrived from Morocco and asked him if he could sell the hashish.



6 Walters - cross

Q Did you also tell him that you had a date that evening?

A I did.

Q With one of your girl friends?

A I did.

Q You told him that?

A Yes.

Q And that you were late for your date; isn't that a fact?

A Yes.

Q And you wanted to leave something in his apartment and that you would call back on another occasion?

A No, I intended leaving the suitcase there and then leave for London as soon as possible.

Q When was that supposed to be, Mr. Walters?

A That was to be as soon as I had the airfare back.

Q Did you have a round trip ticket?

A No.

Q Mr. Walters, when you left the apartment, was the piece of luggage that you brought into the apartment closed?

A I believe so, yes.

Q And do you know who closed it, sir?

A I can't remember who closed it.

7 Walters - cross

Q When you left the apartment, do you know whether the piece of luggage remained?

A I didn't leave with it. I left it there.

Q Do you know where in the apartment the luggage remained when you left?

A Not really -- on the floor, I believe.

Q But you are not certain where?

A Not honestly certain, no.

Q Can you describe Mr. Kohn's apartment, sir?

A Not accurately, no.

Q Well, when you come through the doorway, is there a long foyer there?

A Yes.

Q How long a foyer would you say there is or there was?

A As far as I can remember maybe ten feet, twelve feet.

Q Twelve feet long, right?

A Yes.

Q Now, where is the first room -- what is the first room that you went into after you entered the apartment outside of the hallway or foyer?

A At the end of the hallway inside the apartment.

Q Did you make a right turn or left turn?



1

2

A I believe I went straight ahead.

3

Q You are not certain of that?

4

A I am not certain of that, no.

5

6

Q But this room that you went into, is at  
the end of the foyer?

7

A I believe so.

8

Q Would that be the living room, sir?

9

A As far as I could tell, yes.

10

(Continued next page.)

Reel 3 11  
Rose flws.

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1 Walters - cross

2 CROSS-EXAMINATION

3 BY MR. SCHACHER (Cont'd):

4 Q Could you see that room as you stand in  
5 the doorway?

6 A Yes.

7 Q Can you see what's inside the room?

8 A Basically, yes.

9 Q You saw certain pieces of furniture?

10 A Right.

11 Q You can't see everything that is in the  
12 room; right?

13 A No.

14 Q With reference to the doorway and this room,  
15 when you left, where was this piece of luggage?

16 A On the floor on the right-hand side of the room,  
17 going into the room.

18 Q On the right-hand side. If you were standing  
19 in the doorway, could you see this piece of luggage?

20 A I would think so, yes.

21 Q But you are not certain of it --

22 A The doorway of the room?

23 Q No, the portion leading into the room, the  
24 hallway.

25 A No.



2 Walters - cross

Q If you are outside and the door was to be opened, you are not certain whether you could see that piece of luggage in the living room?

A No.

Q Now, Mr. Walters, you say you made this telephone call about two hours after you had been apprehended by the Customs agents; right?

A Yes.

Q And you were apprehended about 4:00 or 4:30?

A Yes.

Q And two hours after that would be about 6:00 o'clock?

A Yes -- I can't recollect the time.

Q If I were to tell you that the caption of this transcript says the call was made at 8:00 o'clock, would that be correct?

A That would probably be correct, yes.

Q Did the agents tell you what to do when you came to Mr. Kohn's apartment?

A They told me to go in, to just make sure that I left the bag there and to leave.

Q In other words, it was their suggestion that you leave the bag there and then leave; right?

A Right.

3 Walters - cross

Q There is no doubt about them telling you just that?

A No doubt about that.

Q And you carried out their suggestion; right?

A Right.

Q Because if you did carry it out, they would go easy on you; right?

MR. STECHEL: Objection.

THE COURT: Sustained.

Q After you left the apartment, sir, where did you go?

A I went back to the Customs headquarters.

Q The two men that were on the floor that you were on -- withdrawn.

When you left the apartment, did you still see those two men out in the hallway?

A I don't think so.

Q Where were they, do you know, sir?

A No.

Q Did you see them at all after you left the apartment?

A I believe I saw them later back at the Customs House.

Q When you left Mr. Koh's apartment and went down into the street, you didn't see those two men at all,



4 Walters - cross

did you?

A No -- well, when I went down into the street, there were two other agents in the street -- people covering, you know --

Q How many agents, when you got into the street, went into the house?

A I didn't see any go into the house.

Q How many came there with you, sir?

A As I said before, maybe seven.

Q You don't know if any of those seven agents had left the area prior to your coming out of the apartment, do you, sir?

A No. When I came out of the apartment, I was met by two agents and then driven back to the Customs House.

Q And the other agents remained behind?

A As far as I could tell.

Q That was five or six agents that remained behind?

A As far as I know, yes.

Q Did they tell you what they were going to do after you left the partment?

A No.

Q You knew what they were going to do?

A I was under the impression that they would go up and -- go into the apartment.

1           5                   Walters - cross

2                   Q           Did they tell you prior to your going into  
3           the apartment to leave the piece of luggage in a very --  
4           in a place that could be easily seen?

5           A           No. They just said leave it, as far as I can  
6           remember.

7                   Q           Leave it. And you left it?

8           A           Yes, I left it.

9                   Q           Now, did you make any notes of what you did  
10          while you were in the apartment, sir?

11          A           No.

12                  Q           Now, from the time that you entered the  
13          apartment and then left the apartment, until the time you  
14          came to Court today, how many times have you spoken with  
15          the agents or the United States attorney's office?

16          A           Three times.

17                  Q           How long a period of time did each session  
18          take?

19          A           Well, the first one before I went to Court myself --  
20          as soon as I was arrested and arraigned and so on, took  
21          maybe 20 minutes.

22                  Q           Who was that conversation between?

23          A           Myself and Mr. Stechel.

24                  Q           Any of the agents present?

25          A           The Customs agent that is in Court today



6 Walters - cross

Q What did Mr. Stechel say to you and what did you say to him, if you remember, sir?

THE COURT: This is outside the scope.

MR. SCHACHER: I will withdraw it, your

Honor.

Q You had a second and third conversation, too, is that right?

A Only two.

Q Without telling me the contents of your conversation, how long a period of time did the second conversation take?

A 15 minutes.

Q Who was that between?

A Myself and Mr. Stechel.

Q Any agents present?

A No.

Q Now, have you taken a plea to any charges lodged against you?

A I have.

Q What did you plead to?

A I pleaded guilty to importing hashish into the country.

(Continued on next page.)

Walters-cross

Q And what did they tell you you would receive  
by way of a punishment?

THE COURT: Nothing.

MR. STECHEL: Objection.

A Nothing.

THE COURT: Absolutely nothing.

MR. SCHACHER: Wait.

THE COURT: Don't ask that question before  
me. Nothing.

I don't care what they told him. He  
gets nothing whatsoever -- no promises made  
by this Court.

Q Did any of the Assistant U.S. Attorneys or  
any of the agents make any promises to you at the time you  
took your plea?

A None whatsoever.

Q Were you told they would go lenient on you?

A No.

THE COURT: That is not part of the  
suppression hearing.

MR. SCHACHER: It's going to his  
credibility, your Honor.

THE COURT: No. What credibility?  
This goes to motive, hoping he doesn't go to



2 1 Walters-cross

2 jail. That doesn't have anything to do with  
3 me.

4 MR. SCHACHER: The question I am asking  
5 has no reflection upon your Honor.

6 THE COURT: Better not be.

7 MR. SCHACHER: I think you know me better  
8 than that, your Honor, to even --

9 THE COURT: We only went to law school  
10 together, so it better not be.

11 MR. SCHACHER: To think that you would  
12 think that of me. It's insulting to me.

13 THE COURT: No. No promises from this  
14 Court.

15 MR. SCHACHER: I know your Honor too  
16 well to even think of that in the slightest  
17 degree.

18 THE COURT: Okay.

19 BY MR. SCHACHER:

20 Q Now, Mr. Walters, when you brought this  
21 valise or luggage into the apartment, were all the straps  
22 tied around it?

23 THE COURT: We have to take a short  
24 recess.

25 A As far as I can remember, they were.

3  
1 Walters-cross

2 Q In other words, it was zipped up, and then  
3 the overlapping straps were closed and secured; right?

4 A Yes.

5 Q It was completely closed?

6 A Right.

7 Q Now, how long would you say, to the best  
8 of your ability or knowledge, were you inside that apartment,  
9 prior to going out again?

10 A 15, maybe 20 minutes.

11 Q And maybe less, right, sir?

12 A Maybe less.

13 MR. SCHACHER: Thank you.

14 No further questions.

15 THE COURT: Take a couple of minutes  
16 recess.

17 MR. STECHEL: All right.

18 THE COURT: Step down.

19 MR. SCHACHER: Your Honor, may I? I  
20 am sorry, sir. Please forgive me.

21 If this witness will remain in court,  
22 I'd like to have instructions issued that  
23 nobody confer with him.

24 THE COURT: No one talk to him.

25 MR. STECHEL: No one is conferring with



Walters-cross

him.

(Recess taken.)

MR. STECHEL: Your Honor, in addition to the issue of the admissibility of the contraband seized and other items seized, we also have Miranda statements, so we are -- I'll bring that out, too.

In connection with the seizure and the statements to the next witness, the agent.

MR. SCHACHER: Your Honor, I object to that, because I made a motion pursuant to my bill of particulars, for any statements and admissions or confessions made by this man.

MR. STECHEL: They were turned over.

MR. SCHACHER: Now here, they only say -- you have this one statement here that you turned over to me.

MR. STECHEL: I think this is completely specious.

MR. SCHACHER: You mentioned something --

MR. STECHEL: There are statements that he made, turned over long in advance to Mr. Schacher the substance of the statements in a customs report, the substance of which --

5

Walters

THE COURT: Whose statements?

MR. STECHEL: Of the defendants.

THE COURT: The defendants' statements?

MR. SCHACHER: This telephone conversation.

MR. STECHEL: No.

THE COURT: No.

MR. SCHACHER: That's all I got.

MR. STECHEL: No, that's not true. You  
got a customs --

MR. SCHACHER: That's all I got, sir.  
You look. See.

MR. STECHEL: There.

MR. SCHACHER: Those are remarks. Those  
are not saying he made those statements.

MR. STECHEL: May I read into the  
record, please, the customs report which I  
turned over to Mr. Schacher long ago, dated  
March 21, 1973, where it says, on page 11,  
which is signed by Robert J. Czujak, special  
agent, "Saul M. Kohn has made various admissions  
which should be noted. In the presence of  
special agent Czujak and Assistant U.S. Attorney  
Howard Stechel, Kohn admitted that his intention  
was to sell the hashish that Walters had



6  
1 Walters

2 delivered to him. In response to a question  
3 by U.S. Magistrate Max Schiffman, regarding  
4 his occupation, Kohn answered that he made  
5 his living by selling marijuana.

6 THE COURT: To the Magistrate?

7 MR. STECHEL: To the Magistrate.

8 That's another statement.

9 MR. SCHACHER: I think we'll have to  
10 call the Magistrate, your Honor.

11 MR. STECHEL: If he wishes, but it was  
12 in the presence of agents.

13 MR. SCHACHER: I want the Magistrate  
14 present.

15 MR. STECHEL: Excuse me.

16 THE COURT: No. They do not have --  
17 They have to prove it was made.

18 MR. STECHEL: Statements in the  
19 apartment.

20 MR. SCHACHER: This is just a summary.  
21 This is not the statements this man actually  
22 made. I am entitled to know the statements he  
23 actually made.

24 MR. STECHEL: He'll hear them on the  
25 witness stand.

7      1                    Walters      ,

2                    MR. SCHACHER: You gave me the  
3 substance.

4                    THE COURT: These are oral statements?

5                    MR. STECHEL: Right.

6                    THE COURT: How about down before the  
7 Magistrate? Was it place on the record?

8                    MR. STECHEL: I don't know.

9                    THE COURT: Before the Magistrate?  
10 Doesn't he have a stenographer? Oh, no.

11                   MR. STECHEL: Not on arraignment.

12                   THE COURT: No?

13                   MR. STECHEL: I am saying there are  
14 statements made in the apartment. There are  
15 statements made to the agents after the arrest  
16 and there were statements made at the  
17 Magistrate.

18                   MR. SCHACHER: He has given me a  
19 synopsis.

20                   THE COURT: Any warnings given at the  
21 time?

22                   MR. STECHEL: Certainly.

23                   THE COURT: All right.

24                   MR. SCHACHER: These are a synopsis.  
25 I am entitled to everything this man says.



8 1 Walters

2 THE COURT: You will hear them right  
3 now.

4 MR. SCHACHER: But I asked for these  
5 in advance of this hearing, your Honor.

6 I asked for these -- this information  
7 pursuant to a Bill of Particulars, and I was  
8 not furnished with a complete bill, your Honor.  
9 I was given a synopsis.

10 MR. STECHEL: Your Honor, this is --  
11 this is becoming a -- an unfortunate acrimonious  
12 misrepresentation, because this man --

13 MR. SCHACHER: I don't like these  
14 Harvard words. I didn't go to Harvard, Mr.  
15 Stechel. I'm sorry.

16 THE COURT: Are you attacking our  
17 law school too? All right. You are not  
18 attacking our law school?

19 MR. SCHACHER: I didn't say which  
20 Harvard I am attacking, your Honor.

21 THE COURT: All right, now, please,  
22 let's get on with the Miranda warnings, because  
23 we must speed it up. I have this other case  
24 where the jury is sitting in there for me.  
25

1  
2 E D W A R D F. W A L S H, having been first  
3 duly sworn by the Clerk of the Court, was  
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STECHEL:

7 Q Mr. Walsh, what is your occupation?

8 A I am Assistant Special Agent in charge, U.S.  
9 Customs.

10 MR. SCHACHER: I can't hear him, your  
11 Honor.

12 THE COURT: You had better sit over  
13 here, because they're all going to drop their  
14 voices.

15 THE WITNESS: Your Honor, I have a problem.  
16 I'm undergoing dental treatment now.

17 THE COURT: All right. I understand.

18 MR. SCHACHER: We have company, Judge.

19 BY MR. STECHEL:

20 Q Please repeat your occupation.

21 A Yes. Assistant Special Agent in charge, Customs  
22 Agency Service, Bureau of Customs, Treasury Department.

23 Q How long have you been with the Treasury  
24 Department?

25 A Going on 18 years.



Walsh - direct

Q Before that?

A I was an FBI agent before that.

Q Now, on February 8, 1973, did you have occasion to encounter an individual by the name of Saul Cohen?

A Yes, sir, I did.

Q Do you see the gentleman in court?

A Yes. Sitting over there at that table.

MR. STECHEL: Indicating the defendant, Mr. Schacher?

MR. SCHACHER: I submit that's correct.

THE COURT: That's right. All right.

Q All right, where did this occur?

A This was in his apartment, I think it was 15E, 435 West 23rd Street.

Q In Manhattan?

A In Manhattan, yes.

Q Tell us the circumstances of the meeting?

A We had -- Pardon me. An arrest had been made earlier at JPK of a person named Trevor Walters in possession of hashish, and in furtherance of that investigation, Mr. Walters was brought into Manhattan. He agreed to cooperate with the agents who were in Manhattan at the time. He said that he was to deliver

Walsh - direct

the hashish to Mr. Kohn at the address that I gave.

We had him make a phone call to Mr. Kohn to say that he was in, and as a result of the conversation, we took Mr. Walters up to 23rd Street and we let him go into Mr. Kohn's apartment with a bag containing the hashish.

After Mr. Walters left, we entered the apartment.

Q All right.

What happened upon your entering?

A I told -- I identified myself to Mr. Kohn and told him that he was under arrest for violating the Federal narcotics laws.

Q Was your gun drawn at the time?

A No.

Q Was the door broken down?

A No, sir.

Q Continue, please.

A I told him at that time that I -- I would advise him as to his constitutional rights. I told him that he didn't have to answer any questions. He could remain silent.

I told him that anything he said could possibly be used against him in a court of law.

I told him he could consult an attorney before answering any questions. If he couldn't get an attorney,



Walsh - direct

the Government would get him one.

And I told him that if he wanted to answer any questions, he could, with or without an attorney, and that any time he wanted the questioning to stop, it would stop.

(continued on the next page.)

DIRECT EXAMINATION

BY MR. STECHEL (Cont'd):

Q What happened thereafter, sir?

A I asked him if he understood what I was telling him. He said, "Yes, I know."

Q He said, "I know"?

A Yes. He said, "I understand. I know what you are talking about."

Q All right. What did you do after that, you personally?

A I stayed -- we're in -- I guess it was his living room. We looked around and we saw -- we saw a small amount of hashish on a table in this big room and I asked him about that, and he said it was his. That he had been smoking it earlier, before we got there. And the question of a search warrant came up, which Mr. Kohn discussed with Agent Grieco. *see page 89-90 by Grijal*

Q Excuse me one moment. Excuse me.

Go on.

A And the windup was Mr. Kohn says, "Well, go ahead, do what you want to do," as far as looking around the apartment was concerned. And actually I didn't stay much longer after that.

I was there when Mr. Kohn said where the bag was



1  
2 that had been brought in earlier by Mr. Walters. He said  
3 it was in the closet, right off of this big room that we  
4 were in. And Agent Czujak picked the bag up in the closet.

5 Q Would you look at Government Exhibit 6 in  
6 Evidence. Does that appear to be similar to the bag you  
7 are speaking of?

8 A Yes, sir.

9 Q Did you thereafter leave?

10 A Very shortly after that, I left. The other agents  
11 stayed.

12 Q The other agents remained; is that correct?

13 A Yes, sir.

14 Q Okay. Was any other seizure made in your  
15 presence that you recall?

16 A The hashish that was out in plain sight, yes.  
17 Agent Czujak put it into an envelope.

18 Q All right. Before you left though, in your  
19 presence, was any other seizure made that you recall?

20 A No, sir.

21 MR. STECHEL: All right.

22 No further questions.

23 CROSS-EXAMINATION

24 BY MR. SCHACHER:

25 Q Mr. Walsh, prior to the time that you went

1  
2 to the apartment of Mr. Kohn, did you know of Mr. Kohn?

3 A No, sir.

4 Q Now, what time did you get to Mr. Kohn's  
5 apartment on the day in question?

6 A I'd say, it was approximately -- pardon me -- 9:00 -  
7 to 9:15 p.m., thereabouts.

8 Q Now, were you present when Mr. Walters was  
9 apprehended, sir?

10 A No, sir.

11 Q What time of day or night was it when you  
12 first saw Mr. Walters after he was apprehended?

13 A I think it was roughly about 6:30 p.m. ✓

14 Q Where did you see him at?

15 A In the first floor office of the Enforcement Division,  
16 which is the Port Patrol Division.

17 Q What is their address, sir?

18 A At 201 Varick Street.

19 Q Now, you saw him at 6:30 p.m. Were you at  
20 Kennedy Airport prior to that time, sir?

21 A No, sir.

22 Q Do you know what time he was actually arrested,  
23 sir?

24 A No, I don't, sir. It was earlier but I don't know  
25 what time.



1  
2 Q When you say earlier, approximately what time  
3 would you say it was?

4 A I think it was roughly between 3:00 and 4:00 p.m.

5 Q You saw Mr. Walters when he came down to  
6 201 Varick Street, did you not?

7 A Yes, sir.

8 Q Who brought him there?

9 A There was C.P.O.s -- Customs patrol officers there.

10 Q In uniform or without uniform?

11 A I don't recall but I think that they were in uniform.

12 Q Do you have any notations on that, sir?

13 A No, sir, I don't.

14 Q Go ahead, sir.

15 A There may have been an agent there from JFK but  
16 I'm not sure about it.

17 Q Do you have any records of whether there was  
18 one or was not there?

19 A No, sir, I don't.

20 Q Is it your office's custom to have agents  
21 down there at JFK?

22 A We have agents assigned to JFK, yes.

23 Q Do you know who was assigned there that day?

24 A Agent Ciardi was one.

25 Q How do you spell that, sir?

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A That's C-i-a-r-d-i.

Q C-i-a-r-d-i?

A Yes, sir.

Q Do you know if he was the agent who apprehended Mr. Walters?

A I had heard that he was but I wasn't there.

Q Did you make any efforts to check that out to see if it was accurate or not?

A As far as I know, it's accurate, sir.

Q Do you have any report on the arrest of Mr. Walters, sir?

A Do I have any report? No, sir.

Q Is there one in existence showing where he was arrested, the time he was arrested and what for he was arrested?

A Yes.

Q Who has that report, sir?

A Agent Czujak would have that.

Q Is he in Court here today?

A Yes, sir.

Q Is he outside or inside?

A He's inside at the counsel table.

MR. SCHACHER: May we see that report, your Honor?



1 Walsh - cross 69  
2 MR. STECHEL: This is the same report  
3 Mr. Schacher already has.

4 THE COURT: You have it.

5 MR. SCHACHER: May I have his report,  
6 your Honor, please?

7 THE COURT: You have it. They gave you  
8 a copy of it.

9 MR. STECHEL: I turned it over long ago.  
10 The entire report.

11 MR. SCHACHER: I'd like the report that  
12 he made of Mr. Walters' arrest, your Honor.

13 MR. STECHEL: That who did?

14 MR. SCHACHER: Mr. Walsh said Mr. Czujack  
15 made it.

16 THE COURT: The report of Mr. Walters'  
17 arrest?

18 MR. CZUJAK: It's the only report that  
19 we have.

20 THE COURT: It's the only report they have.  
21 All right.

22 MR. STECHEL: Is there a seizure report?

23 I will turn over, your Honor, mark for  
24 identification, something which would have been  
25 3500 on the trial, statement of Inspector Balog  
who made the arrest at the Customs belt of Mr. Walters.

Kohn  
3AM4  
Gr/nc

Walsh - cross

70

CROSS- EXAMINATION

BY MR. SCHACHER:(Cont.)

THE COURT: All right.

THE CLERK: Document marked for identification as Government's Exhibit 8.

(So marked.)

MR. SCHACHER: May I have one moment, please, Your Honor?

THE COURT: Surely.

MR. SCHACHER: Your Honor, I may for the purpose of this hearing, -- may we have the time that the record would indicate that Mr. Walters was actually arrested, sir?

THE COURT: What, will we get that? What are you asking for? I don't know these things. You have it there. You have the arrest record there.

MR. SCHACHER: They don't tell you what time. They just said a certain flight, Iberia, arrived from Spain.

MR. STECHEL: I'll point out one matter. Government Exhibit 4 in evidence being the Customs declaration --

MR. SCHACHER: Does that have the time?

XXXXXX



Walsh - cross

MR. STECHEL: -- states 3:15.

MR. SCHACHER: Is that the time when he was arrested, sir?

MR. CZUJAK: I would say approximately 15 minutes after that.

MR. SCHACHER: So it's agreed that Mr. Walters was arrested about 3:30 p.m.?

MR. CZUJAK: It's in my report.

MR. SCHACHER: It's in evidence, your Honor. And the stipulation on file, I won't need this anymore.

May I have it for just a few moments, sir?

MR. STECHEL: Surely.

THE COURT: Yes.

MR. SCHACHER: Thank you.

BY MR. SCHACHER:

Q Now, MR. Walsh, when you first saw Mr. Walters, did you prepare a report on him?

A No, sir.

Q When you saw Mr. Walters, at 201 Varick Street, were these two pieces of luggage with him at the time?

A They look like it.

THE COURT: This is not a suppression.

3 Walsh - cross

This is a question of Miranda here. You are on the wrong hearing now. A question of whether or not he was advised of his rights of making a statement. Doesn't make any difference what Walters did. We are through with Walters.

BY MR. SCHACHER:

Q Mr. Walsh, what was it that you said to Mr. Kohn and what was it that he said to you when you arrived at his apartment?

A I told him that he was under arrest.

Q Did you tell him what for?

A Yes. For violating the Federal Narcotics laws.

Q And where did you tell him this that he was under arrest?

A In his -- inside the doorway, in his apartment.

Q In the doorway?

A In -- inside the doorway, in the apartment. He opened the door.

Q As you came over the threshold of the door, you told him he's under arrest?

THE COURT: He didn't say that, you are saying that.

Q I'm asking, how far in the apartment from the doorway did you place him under arrest?



1 4 Walsh - cross

2 A A couple of feet, I don't know exactly.

3 Q Two feet, three feet?

4 A Something like that.

5 Q All right.

6 Now, this was a long foyer, right, sir?

7 A I don't remember. A long foyer?

8 Q Yes.

9 A I don't recall really the length of the foyer.

10 Q Do you know if anybody made up a description of  
11 that apartment, sir?

12 A Not that I know of.

13 Q Do you know if one is in existence or not?

14 A No, sir, I don't.

15 Q Did you ever see one?

16 A I don't recall seeing one, no.

17 Q Now, Mr. Walsh, when you said he was under  
18 arrest, what did you tell -- what did you say to him at that  
19 time?

20 A I told him that I was -- going to advise him of his  
21 rights.

22 Q And where was this given to Mr. Kohn at?

23 A In the room with -- I believe it's his living room.

24 Q In other words, you walked from the hallway  
25 or the foyer into his living room, right?

A Yes, sir.

5 Walsh - cross

Q Did you tell him anything concerning his rights while you were still in the foyer?

A I don't recall his foyer. It was such a short distance that it's --

Q Well, did you discuss this case at any time with Mr. Walters?

A Would you repeat that, sir?

Q Did you discuss this case at any time with Mr. Walters?

A Yes, sir.

Q Did you ask him whether or not there was a foyer just before you got into the living room?

A I don't recall.

Q Do you have anything in writing pertaining to the description of that department?

A No, sir.

Q Of the rooms in the apartment?

A No, sir.

Q Or where the items were found in the apartment?

A Do I have anything?

Q Yes.

A No.

Q Do you know if any writing exists that would show where these different items were found in the apartment?



1 6 Walsh - cross

2 A Yes.

3 Q Who has it?

4 A Agent Czujak.

5 Q May I please see that writing?

6 THE COURT: It's the same one.

7 MR. STECHEL: That's the report.

8 General Customs report.

9 THE COURT: You are still talking about  
10 the same report. You have it.

11 MR. SCHACHER: I am talking anything  
12 other than that, your Honor.

13 THE COURT: No. There is nothing else.

14 Q Now, when you went into the apartment, sir, --  
15 when did you know you were going to that apartment?

16 A Maybe 15 minutes before.

17 Q And who made that determination to go to that  
18 apartment, sir?

19 THE COURT: What difference does it  
20 make? We are not concerned about that. We are  
21 only concerned whether or not he gave this  
22 defendant his rights at the time he made his  
23 statements. If he gave him no rights, he walks.  
24 If he did give him rights, he stays. Simple.

25 Not hard under Miranda.

1 6a Walsh - cross

2 Q Did you have a search warrant when you went  
3 into the apartment, sir?

4 A No, sir.

5 (Continued next page.)

HS flws 6

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HS:pc  
take 4/1

Walsh - cross

Q Did you have a warrant of arrest?

A No, sir.

Q Did any of the agents with you have a warrant or a warrant of arrest when you went into the apartment?

A No, sir.

Q Now, how many agents were there with you when you went to the apartment, sir?

A I believe -- I believe there were 5 -- I think 3 went in and 2 came in after.

Q All told 5?

A Yes.

Q You said that you made certain statements to Mr. Kohn and he responded, right?

A Yes.

Q And he made those statements to you, right?

A Yes.

Q Did you reduce any of those statements to writing, sir?

A I don't understand what statements you are talking about.

Q The statements that you claim Mr. Kohn made to you.

A The statements that he said that he understood --

2

1

Walsh - cross

2

Q Did you reduce them to a written form?

3

A No, sir.

4

Q Is there anything in writing containing the

5

statements which you claim Mr. Cohen made?

6

A It may be in Mr. Czujak's report.

7

Q In your handwriting?

8

A No, sir.

9

Q Did you personally make any handwritten

10

notation or report of what Mr. Kohn replied to statements

11

made to him?

12

A No, sir.

13

Q Do you know of any other agent having it

14

in writing or made a written report?

15

A I know that Agent Czujak made a written report of --

16

Q Of what you told him?

17

A Yes.

18

Q I am asking you, did any agent present at

19

the apartment when Mr. Kohn was told of his Miranda rights,

20

and as you testified, he gave certain statements or

21

answers, did any agent present at that apartment at that

22

time when those statements were made by Mr. Kohn, reduce

23

any of them to a verbatim, written form?

24

A I don't think so.

25

Q You did not?



Walsh - cross

A No, sir.

Q Now, when did you give this information that you received from Mr. Kohn to any other officer?

A Agent Czujak was there at the time. He heard this.

Q You don't know this for a fact, do you?

THE COURT: Know what?

Q (continuing) That Mr. Czujak heard it.

A Yes, because we discussed it afterwards.

Q And you discussed with Mr. Czujak what Mr. Kohn stated?

A Yes.

Q As a synopsis of what he stated; is that correct?

A Basically.

Q It wasn't a verbatim report made, was it?

A No, sir.

Q How many minutes or hours had passed from the time that Mr. Kohn allegedly made these remarks, until the time it was reduced to any form of writing?

A I don't know exactly. I wouldn't know. Agent Czujak was the case agent.

Q Did you discuss with Mr. Czujak what he did -- did you discuss it with this agent, when he made any written report of what Mr. Kohn was supposed to have said

Walsh - cross

in his apartment?

A Yes, we discussed the entire case. He had to write the report.

Q Who gave Mr. Czujak the information pertaining to what Mr. Kohn was supposed to have said?

A I did -- I told him.

Q You told him?

A Yes, sir.

Q When you told him that, did he write it down?

A I assume that he did.

Q Didn't you see what he was doing when you told him this?

A Not at that moment, -- no.

Q You don't know when he reduced it to a writing, do you, sir?

A Not exactly.

Q It could have been the following day or the following week; is that correct?

A Possibly.

MR. SCHACHER: Your Honor, am I limited to --

THE COURT: Only to Miranda. We were over the suppression, and now we are on



Walsh - cross

Miranda.

Q Agent Walsh, when you knocked on the door, did you have your badge out?

A Yes.

Q Is there a peephole in the door?

A I don't recall.

Q Did you take any pictures of that apartment, both inside and outside?

A Not that I know of.

Q Do you know whether or not Mr. Kohn, before he opened the door, opened up the peephole and saw your badges?

THE COURT: How would he know that?

Q If Mr. Kohn wouldn't have opened the door, what would you have done --

MR. STECHEL: Objection.

THE COURT: What was that?

MR. SCHACHER: I asked him what would have happened if Mr. Kohn would not have opened the door.

THE COURT: You cannot ask that question. He did open the door. We cannot speculate.

Q You had no search warrant or warrant of arrest?

Walsh - cross

A No, sir.

THE COURT: No, he didn't have any.

Q Do you know when it was agreed upon amongst the agents, that they would go to Mr. Kohn's apartment, if you know, sir?

A Yes, sir.

Q When?

A After the bag with the hashish had been delivered.

Q When was that determined, sir?

A After Mr. Walters left the apartment and told us what had happened.

Q When you went to the address of Mr. Kohn, were you not going there for the purpose of going in there and finding this bag there?

A If it had actually been delivered, yes, sir.

Q Didn't Mr. Walters go there with the purpose in mind of putting the bag inside the apartment?

MR. STECHEL: Objection.

THE COURT: Yes, sir.

Q When you --

THE COURT: That's a good examination at a trial, but not at a suppression hearing.

Q Were you present when Mr. Walters was given instructions as to what he was supposed to do when he got



Walsh - cross

to Mr. Kohn's apartment?

A Yes, sir.

Q What instructions were given?

A He was to deliver the bag to Mr. Kohn.

Q So you took him there for that purpose, right, sir?

A Well, that was the purpose he was supposed to go there.

MR. SCHACHER: No further questions --

One further question.

THE COURT: All right.

Q Before Mr. Kohn was taken to -- before Mr. Walters was taken to Mr. Kohn's apartment, where was the luggage that he carried -- who had custody of it?

A Some of the agents took Mr. Walters and the bag with them in another vehicle. I wasn't in that vehicle.

Q When they went into this other vehicle, who carried the luggage, Mr. Walters or the agents?

A I don't know. I wasn't there.

Q Would you say the luggage was in the custody of the agents prior to going to Mr. Kohn's apartment?

THE COURT: He does not know.

A I don't know.

MR. SCHACHER: No further questions.

8

1

Walsh

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THE COURT: Any further questions?

3

MR. STECHEL: No.

4

THE COURT: Do you have another witness?

5

MR. STECHEL: Yes.

6

THE COURT: Why do you need the other

7

witness?

8

MR. STECHEL: There were statements made

9

after that and there was another seizure made,

10

which I would like to bring out on the

11

suppression hearing.

12

MR. SCHACHER: Your Honor, is Mr. Stechel

13

producing the agent who actually picked up this

14

piece of luggage at the apartment?

15

MR. STECHEL: Yes.

16

THE COURT: I know he is producing a box

17

there, which is not part of this luggage.

18

19

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9 1  
2 R O B E R T J O H N C Z U J A K, having  
3 been first duly sworn by the Clerk of the Court,  
4 testified as follows:

5 THE CLERK: State your name,

6 THE WITNESS: Robert John Czujak.  
7

8 DIRECT EXAMINATION

9 BY MR. STECHEL:

10 Q Mr. Czujak, what is your occupation?

11 A I'm a special agent with the Bureau of Customs.

12 Q Were you so employed on February 8th of this  
13 year?

14 A I was.

15 Q Did you meet a Trevors Walters on that day?

16 A Yes, I did.

17 Q Where did you meet him?

18 A At our office at 201 Varrick Street.

19 Q What occurred between you and Mr. Walters at  
20 that time?

21 A Mr. Walters was already present with Agent Walsh  
22 when I arrived and Mr. Walsh, then being my supervisor,  
23 made the determination that I would be the case agent.

24 After this they were going to make arrangements for  
25 a telephone call -- Mr. Walters had agreed to cooperate with

10

Czujak - direct

the Government and we were making arrangements to make a telephone call to the intended receiver.

Q Were you present when a telephone call was made?

A Yes.

Q Did you tape record that conversation?

A Yes.

Q Was that the same tape played here earlier?

A Yes.

Q Continue with what happened after that.

A After the phone call was made, it was decided that we would take Mr. Walters, with the bag, up to Mr. Kohn's apartment for an intended delivery, which in fact, he did.

Q All right.

What did you do exactly yourself at that apartment?

A At the apartment?

Q At the building.

A At the building -- when we were getting ready to leave, I picked up the bag and carried it to the car myself.

We only took one bag with us.

Q Did you see Mr. Walters enter any apartment in that building?



11 1 Czujak - direct

2 A Yes, I did.

3 Agent Greco and myself accompanied Mr. Walters in  
4 the elevator and we watched Mr. Walters go into the  
5 apartment -- apartment 15E.

6 Q 15E?

7 A Yes.

8 Q How long a period -- did you later -- did  
9 there come a time thereafter that Mr. Walters exited that  
10 same apartment?

11 A I did not see Mr. Walters exit. We were hiding in  
12 a hallway and there was only room for one agent to look  
13 without being seen, and Agent Greco saw.

14 Q Agent Greco was in a position to see anyone  
15 leaving the apartment?

16 A Yes.

17 Q How long a period between the time that  
18 Walters -- were you advised that Walters had left the  
19 apartment?

20 A I was standing right next to Greco and he said,  
21 "Okay, he is in the elevator."

22 Q Did you thereafter go into the apartment  
23 yourself?

24 A Yes.

25 Q How long was it between the time you advised

12

Czujak - direct

1  
2 that Walters left the apartment, to the time that you entered  
3 the apartment?

4 A About 10 minutes. We waited for Agent Walsh to  
5 come back upstairs.

6 Q What happened at the door to the apartment?

7 A Agent Walsh knocked on the door and Mr. Kohn  
8 answered the door and Mr. Walsh identified himself as a  
9 Federal officer.

10 Q Did he open the door?

11 A He opened the door.

12 Q How was he dressed -- what was he wearing?

13 A Mr. Walsh?

14 Q No. Me. Kohn.

15 A He had a pair of blue jeans -- he didn't have any  
16 shoes on, you know, wasn't dressed in a suit or anything.

17 Q Do you see Mr. Kohn in court here?

18 A Yes, I do.

19 MR. SCHACHER: I will concede he saw  
20 him. He is in court.

21 Q What time approximately, was this?

22 A 9:20 to 9:30.

23 Q Was that door in -- at any time, knocked  
24 down by any agent?

25 A No, sir.



Czujak - direct

Q When Mr. Kohn opened the door, was your gun or the gun of any other agent drawn?

A There were no guns drawn.

Q At any time in that apartment, was any gun drawn?

A No, sir.

Q What time was this approximately?

A About 9:20, 9:30.

Q Go on, what happened then?

A Mr. Walsh advised Mr. Kohn that he was under arrest for a violation of the Federal narcotics laws.

At the same time -- they were more or less talking in the living room -- when we got into the living room, Mr. Walsh told him that he would have to advise him of his rights, which he did.

He advised him of his rights, according to Miranda.

Mr. Kohn says, "Yes, yes, I know my rights. I know the law."

Mr. Walsh made the point, "I have to tell you anyway what your rights are," which in fact, he did.

(continued on the next page.)

Kohn  
4/2 am  
HSvr 1

Czujak - direct

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Q Now, thereafter was there a conversation between you and Mr. Kohn and any other agents present?

A Well, Mr. Kohn was kind of upset --

MR. SCHACHER: I object to that.

THE COURT: Sustained.

Q Just tell us the conversation as best you can recall as to what was being said?

A Mr. Kohn was complaining that we had no right to be there, that this was another action of the totalitarian government infringing upon people's rights to be free and happy. This went on for about fifteen minutes, telling us that the laws were bad --

Q What laws?

A He didn't specify what laws.

He said the law is wrong, they have to be changed. He also mentioned that many years ago people were executed for drinking coffee and soon, you know, the narcotics laws would have to be abolished, they were infringing on the people's rights to do what they believed. This went on for about fifteen minutes, on this particular subject.

Q What happened after that?

A Mr. Kohn was finally calming down and listening to reason, and I think Mr. Walsh asked him where the bag was. He said he didn't know of any bag, and then he asked us for a



1 search warrant -- "Do you people have a search warrant?"

2 ✓ We told him -- Agent Greico told him, "No, we don't  
3 have a search warrant, but we have every right to get a  
4 search warrant, and we will get a search warrant -- we will  
5 secure your premises and come back tomorrow with a search  
6 warrant."  
7

8 The hour was late and we couldn't secure a search  
9 warrant at that time, and Mr. Kohn just seemed to say, "All  
10 right --"

11 MR. SCHACHER: I object.

12 THE COURT: What you assume he said is  
13 immaterial.

14 ✓ THE WITNESS: He said, "I don't care what  
15 you do, just do what you have to do."

16 That's it.

17 Q Did you ask him where the bag was?

18 A ✓ Agent Walsh asked him where the bag was and he pointed  
19 towards to closet almost right in the living room -- he said,  
20 "The bag is in the closet."

21 ✓ Q Did you see the bag removed from the closet?

22 A ✓ I removed it myself.

23 Q Look at Government's Exhibit 6 in evidence, is  
24 this it -- is this the bag that you removed?

25 A Yes, it is.

3

1

Czujak - direct

2

Q Would you look at the contents of Government's

3

Exhibit 6 and tell us if that was the contents in the bag

4

when you removed it?

5

A Yes, they appear to be identical.

6

Q After you removed the bag from the closet

7

Government's Exhibit 6 --

8

MR. SCHACHER: I object to the contents of

9

that bag. The steps that were taken have not been

10

shown, what identification was put on the bag --

11

MR. STECHEL: You can look at it.

12

THE COURT: Do you want to look at it?

13

Q Are your initials on that?

14

A Yes.

15

Q What's the date?

16

A 2/23/73.

17

THE COURT: You do not think he would bring

18

it in without initials?

19

MR. SCHACHER: The agents make mistakes, too.

20

THE COURT: Not when it comes to that.

21

MR. SCHACHER: I have seen it happen, Judge.

22

Q After you removed the bag, Government's

23

Exhibit 6, from the closet, what happened then?

24

A At that time Mr. Walsh felt he was no longer needed,

25

and he left --



Czujak - direct

MR. SCHACHER: I object to that.

THE COURT: Try not to give us what feelings and emotions people had. Just tell us what happened.

Q What happened?

A Mr. Walsh left, and Agent Greico asked Mr. Kohn if he had any guns in the house, to which Mr. Kohn answered no, he did not.

Mr. Greico said, "Are you sure, because we are going to look?"

He said, "No, no, I don't have any guns."

✓ But the meantime, two of the other agents -- after Mr. Kohn told us he didn't care what we did, one of the other agents went into the bedroom to look around, and Mr. Greico went to the linen closet near the bedroom to look for guns -- we were looking for any weapons, and he found two holsters -- two holsters. He went back to Mr. Kohn with the holsters and asked him, "Do you have any guns in the apartment?"

And Mr. Kohn said, "No, I don't."

Mr. Greico said, "What were the holsters for?"

He told us something about a friend left them. We were not satisfied and continued looking around.

Mr. Greico went back into the linen closet and pulled out a scale --

Czujak - direct

Q A scale?

A A scale.

Q ✓ Could you please step down a moment?

(Witness leaves witness stand.)

THE COURT: Are you claiming this is  
coincidental to the arrest?

✓ MR. STECHEL: There is consent.

THE COURT: Why must you do this?

What consent?

MR. STECHEL: The man was advised of his  
rights.

THE COURT: You know better.

MR. STECHEL: There are many cases --

THE COURT: I can tell you this type of case  
inside out. I know all the automobile cases,  
apartment cases. I know them all. You want to  
put it in? I will just have to make a ruling on it.  
That is all.

MR. SCHACHER: Your Honor, there is a recent  
case that came down last week --

THE COURT: I read every case.

MR. SCHACHER: It is United States against  
Map.

MR. STECHEL: It supports the Government's



viewpoint, that there was consent --

MR. SCHACHER: Wait a minute --

THE COURT: Let me hear the testimony.

MR. SCHACHER: Do you have the Map case?

THE COURT: I read it already.

MR. SCHACHER: That's all I am asking, your Honor.

MR. STECHEL: Please mark this for identification.

THE CLERK: Scale marked for identification as Government's Exhibit 9.

(So marked.)

Q Please look at Government's Exhibit 9 --

A That's the scale taken out of Mr. Kohn's closet.

Q Were any other seizures made in the apartment?

A Yes, there were. There was a brick -- I guess you would call it a brick of hashish -- excuse me, marijuana taken out of a dresser drawer.

Q Was that thereafter placed in any kind of bag?

A Yes, it was placed in that bag over there (indicating).

MR. STECHEL: Please mark this for identification.

THE CLERK: Bag marked for identification as Government's Exhibit 10.

(So marked.)

7

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Czujak - direct

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(Witness sreturns to witness stand.)

3

Q Will you please look at Government's Exhibit 10.

4

Do you recognize that?

5

A Yes, I do.

6

Q What is that?

7

A Excuse me?

8

Q What do you recognize it as?

9

A My initials are on it, and it is the bag that I put

10 the brick of marijuana in.

11

Q Was there any other contraband in the apartment

12

that you saw?

13

A Yes, on the table in the living room -- I guess it

14

is a living/dining room type thing. In open view there were --

15

there was a slab of hashish and several pipes on the table.

16

Q Was that seized?

17

A Yes, it was.

18

MR. STECHEL: Would you please mark this

19

for identification?

20

THE CLERK: Marked for identification as

21

Government's Exhibit 11.

XXXXXXX

22

(So marked.)

23

(Exhibit shown to witness.)

24

A Yes, my initials are on this bag.

25

Q Now, after these seizures were made, what



2 happened then?

3 A We took Mr. Kohn -- we left him get dressed and we took  
4 him down to our office at 201 Varick Street for processing --  
5 fingerprinting and mug shots and the like.

6 We have a questionnaire or a form that we make out on  
7 all prisoners.

8 It asks various questions, address and what-not. I  
9 asked Mr. Kohn what his occupation was and he told me that  
10 he sells marijuana.

11 Q What happened after that?

12 A We finished processing Mr. Kohn and we took him to the  
13 Federal House of Detention on West Street and lodged him for  
14 the night.

15 Q The next day, did you transport him over here?

16 A No, I did not. Agent Anthony Santralla transported  
17 him to your office.

18 Q Were you present?

19 A Yes, I was. I was with Trevor Walters getting him  
20 processed -- taking him before the Magistrate.

21 Q Were you present with Mr. Kohn at any time?

22 A Yes, when Mr. Kohn was brought into your office, I was  
23 present.

24 Q What occurred there?

25 A Mr. Kohn was sitting in the outer office -- your outer

8a

Czujak - direct

96a

office, and your secretary was making up a form, or what-not,  
and she also asked him what his occupation was, and he again  
told her that he was a marijuana salesman.

(Continued on next page.)

GR fols



GR/td  
5/1

1  
2 Q What happened after that?

3 THE COURT: This is only in reference of  
4 occupation now? This is not making statements or  
5 anything?

6 THE WITNESS: Right.

7 THE COURT: All right.

8 THE WITNESS: A short time transpired after  
9 that. Mr. Kohn was still sitting in the outer  
10 office and -- and I believe he was asked by you  
11 what did you intend to do with this -- with this  
12 hashish and he stated --

13 THE COURT: Asked whom?

14 THE WITNESS: Mr. Stechel asked Mr. Kohn.

15 THE COURT: Where was that?

16 THE WITNESS: In Mr. Stechel's office.

17 THE COURT: This is when he was under arrest,  
18 after he was indicted?

19 MR. SCHACHER: That's correct, your Honor.

20 MR. STECHEL: He wasn't indicted, your Honor.

21 THE COURT: Was he advised of his rights  
22 at this point? Was he given Miranda at this point?

23 THE WITNESS: At which point?

24 THE COURT: When Mr. Stechel was talking  
25 to him?

Czujak-direct

✓ THE WITNESS: I dont recall.

THE COURT: It's got to be a continuous  
Miranda right giving at every -- each time that  
✓ you speak to a defendant.

BY MR. STECHER:

Q Continue, please.

THE COURT: It has to be.

A In response to that question, he said "What do you think  
I intended to do with it? I intended to sell it, of course."

MR. SCHACHER: Your Honor, I object to it,  
your Honor, in view of the --

THE COURT: Sustained.

Q Continue.

MR. SCHACHER: Move that be stricken.

THE COURT: I will sustain it.

Q What happened after that?

A After that, he was brought down to Magistrate Schiffman--  
and for for purposes of bail setting, I guess, and Mr. Schiffman  
asked him for purposes of setting bail, I assume, what his --  
again, do you have -- where do you live and do you have any  
job, and he said yes, and he said, "Well, how do you make  
your living?"

And he said "I make my living by selling marijuana,  
a little bit here and --"



Czujak-direct

1  
2 MR. SCHACHER: I object again, your  
3 Honor.

4 MR. STECHEL: There will be nothing more  
5 admissible than a statement made in open court.

6 THE COURT: It's a little different.

7 MR. SCHACHER: I will ask for the production  
8 of Judge Schiffman in this courtroom, your Honor.

9 THE COURT: You have the right to subpoena  
10 him, if you want him.

11 MR. SCHACHER: I didn't know Mr. Stechel --  
12 I will ask that he be brought here without the  
13 subpoena.

14 THE COURT: We may not have to cross that  
15 bridge, let's see what happens. All right.

16 BY MR. STECHEL:

17 Q What happened after that?

18 A Well, I didn't think Mr. Kohn made bail and he was  
19 remanded to the custody of the Marshal.

20 Q All right. Now, Mr. Czujak, I want to be clear.  
21 When you entered the apartment, your gun was not drawn; is  
22 that correct?

23 A That's correct.

24 Q It was approximately nine, nine fifteen in the  
25 evening?

1  
2 A That's correct.

3 Q Mr. Cohen answered the door?

4 MR. SCHACHER: Your Honor, this is a rehash  
5 of the questions put to this witness before.

6 MR. STECHEL: I would like to make this  
7 very clear in light of the question that is being  
8 raised.

9 THE COURT: What's that?

10 MR. STECHEL: Exactly what happened precedent  
11 to these seizures.

12 MR. SCHACHER: He is making a synopsis now.

13 MR. STECHEL: Your Honor, I object to the  
14 continual interruptions of my examination of this  
15 witness.

16 MR. SCHACHER: I have a right to object.

17 MR. STECHEL: I am trying this case.

18 MR. SCHACHER: You don't impress me at all,  
19 Mr. Stechel.

20 THE COURT: Let's back up a little bit now.

21 MR. SCHACHER: I have a right to object to  
22 anything you do.

23 THE COURT: Mr. Schacher, how come you can  
24 close your ears when you want to do that?

25 MR. SCHACHER: Yes. I am doing that right  
now.



Czujak-direct

1  
2 THE COURT: Keep them open. Just ask  
3 questions. A review of what has already been  
4 said is not necessary. I am sitting up here.  
5 I hear it. I know what my rulings must be.

6 BY MR. STECHEL:

7 Q After Mr. Kohn was advised of his right, did  
8 he say he understood his rights?

9 MR. SCHACHER: Objection, your Honor.

10 THE COURT: He already said that.

11 We have that. I understand that.

12 Q Thereafter, was he advised of the right to have  
13 a search warrant?

14 A Excuse me?

15 Q Was he thereafter advised that he had a right  
16 to require you to get a search warrant?

17 MR. SCHACHER: Your Honor, there is no question  
18 asked of -- told of his rights to get a search  
19 warrant. He raised the issue.

20 MR. STECHEL: No. He's already testified.  
21 I want to make this very clear. He has already  
22 testified to it.

23 THE COURT: No.

24 Q Please repeat your testimony so it's clear.

25 A Mr. Kohn asked Agent Greco, did he have a search warrant,

Czujak-direct

and Agent Greco says "No, but we can get one."

Q And then what happened? What was said?

THE COURT: Right there and then?

A Agent Greco again told him that we did have the right to get a search warrant, we would get a search warrant, we would secure his premises until the following morning and get a search warrant.

Q And what --

A If he wished.

Q If he wished. What did Mr. Kohn say?

A Mr. Kohn then just said, "Well, all right, do what you have to do".

THE COURT: Well --

Q Was he thereafter asked any specific questions?

✓ THE COURT: Which are the inferences that I am supposed to draw from that?

The inference to do what you have to do, get the search warrant, or the inference don't get the search warrant?

✓ The inference must be in favor of the defendant. It's as easy as all that.

Q Did Mr. Kohn ever say that you should not search the premises?

A No.



1 ✓ MR. SCHACHER: I object.

2  
3 THE COURT: Mr. Stechel, don't belabor  
4 the point. Believe me, don't belabor the point.  
5 You can take an exception to my ruling when I am  
6 all through. But don't belabor it.

7 MR. STECHEL: Your Honor --

8 THE COURT: I just gave you the reasoning,  
9 my own reasoning, which are the inferences that  
10 I draw? The inference of innocence, get your  
11 search warrant, or the inference of consciousness,  
12 that you don't need a search warrant?

13 MR. STECHEL: If I'll be permitted to, I  
14 am bringing out the entire conversation.

15 I keep being interrupted for bringing out  
16 what the witness --

17 THE COURT: You are not being interrupted.  
18 I didn't interrupt you at all. He is saying nothing  
19 different now than before. Initially, I said  
20 nothing.

21 The point is being belabored and it doesn't  
22 prove anything by belaboring it.

23 MR. STECHEL: Your Honor, please allow me  
24 to present the evidence.

25 THE COURT: All right.

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BY MR. STECHEL:

Q Mr. Czujak, after Mr. Kohn was advised of his Miranda rights, after that was completed, did he say he understood those rights, point one?

A Yes, he did.

Q All right.

Thereafter, was there a conversation concerning what was in the apartment?

A Well, we asked him where the bag was.

Q Yes. What did he say?

A Well, first of all, he said he didn't know anything about a bag, but we asked him a few times. "Well, where is the bag?"

And after we told him that we would get a search warrant, he said, "Okay, the bag is in the closet, do what you have to do."

Q Before he said "Do what you have to do," did he tell you the bag was in the closet?

MR. SCHACHER: Your Honor, I object; been asked and answered.

THE COURT: Sustained. He has answered that many times now.

MR. STECHEL: I have no further questions.

THE COURT: All right.



## 1 CROSS EXAMINATION

2 BY MR. SCHACHER:

3 Q Mr. Czujak, I'll try not to belabor the point,  
4 sir.

5 THE COURT: I doubt it.

6 MR. SCHACHER: Your Honor knows me very well,  
7 sir. Thank you very kindly.

8 THE COURT: I doubt it.

9 You will make sure I understand it.

10 I am certain of that, too. Go ahead.

11 MR. SCHACHER: Understand me, your Honor?

12 THE COURT: No. Go ahead.

13 MR. SCHACHER: My wife doesn't even understand  
14 me. sir.

15 Q Mr. Czujak, prior to going to the apartment  
16 of Mr. Kohn, the customs agents had the custody and control  
17 of the narcotics; right?

18 A That's correct, sir.

19 s Q And you took the narcotics with you when you  
20 went to the apartment; right?

21 A That's correct.

22 Q And you told Mr. Walters to take the narcotics  
23 with him into the apartment; right, sir?

24 A That's correct.

25 Q I can't hear you?

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A That's correct, sir.

Q Now, how long was Mr. Walters in the custody  
of the Customs Agent prior to going to Mr. Kohn's apartment?

A I could only testify, sir, to the -- to when I came  
in contact with Mr. Walters.

(Continued on next page.)



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1 Czujak - cross

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CROSS-EXAMINATION

BY MR. SCHACHER (Cont'd):

Q Well, do you know what time Mr. Kohn was arrested, sir?

A Yes, I do.

Q What time?

A Approximately 9:30.

Q Sir, I mean Mr. Walters.

THE COURT: We agree. 3:30. We sat down there and everybody agreed on it.

Q Between 3:30 and the time that Mr. Walters was taken to Mr. Kohn's apartment, sir, was there ample opportunity for you gentlemen to acquire a search warrant or warrant of arrest?

MR. STECHEL: Objection.

THE COURT: That's a good question.

MR. STECHEL: Was there ample opportunity for what?

THE COURT: To get a search warrant.

MR. STECHEL: There was -- the contraband was not in the apartment at the time.

THE COURT: Still, a good question.

MR. STECHEL: Your Honor, let me explain my position. He's asking --

Czujak - cross

MR. SCHACHER: Without making a speech --  
I think -- he made the objection.

THE COURT: He's got an exception.  
Go ahead. Ask the question.

MR. SCHACHER: All right.

THE WITNESS: Well, I don't know if I  
can answer that because like I said --

THE COURT: That's right. That is the  
answer. He doesn't know how to answer it.

BY MR. SCHACHER:

Q Well, did you know of you own knowledge, sir,  
that absent an emergency or exigent circumstances, to  
enter one's home or apartment, you require a search warrant,  
sir?

MR. STECHEL: Objection. He's not an  
attorney.

THE COURT: That's not for him. That's  
for me.

Q Was the situation here of an exigent nature,  
sir?

MR. STECHEL: Objection.

THE WITNESS: Can you define that word,  
please?

MR. STECHEL: Objection.



3 Czujak - cross

THE COURT: What is that?

THE WITNESS: I want him to define the word.

THE COURT: Emergency.

Q Emergency.

THE COURT: Is that right?

MR. SCHACHER: Correct.

MR. STECHEL: I objection.

THE COURT: All right. I will sustain it.

BY MR. SCHACHER:

Q Mr. Czujak, prior to going to Mr. Kohn's apartment, did you have any knowledge or probable cause of your own --

THE COURT: Sustained.

MR. SCHACHER: I'm sorry.

THE COURT: I'm the fellow that has to do that.

MR. SCHACHER: Yes. I'm sorry.

THE COURT: I don't know why the lawyers want to get into the judicial field.

MR. SCHACHER: We'd like to take the bench, your Honor.

THE COURT: Okay. I'm just wondering. Go ahead.

1 4 Czujak - cross

2 MR. SCHACHER: I'm just being facetious,  
3 Judge. Please believe me. No offense meant,  
4 your Honor.

5 THE COURT: Go ahead.

6 BY MR. SCHACHER:

7 Q Now, Mr. Czujak, your office or your agency  
8 had the custody and control of this narcotics; right, sir?

9 A That's correct, sir.

10 Q It was not in the possession of Mr. Walters;  
11 right?

12 A That's correct, sir.

13 Q And Mr. Walters could not have gone to  
14 Mr. Kohn's apartment, unless you took him there; right, sir?  
15 He was under arrest, was he not?

16 A Correct.

17 Q So you had to take him there?

18 A Yes.

19 Q You took him there with his person and the  
20 piece of luggage containing the narcotic; right?

21 A Yes.

22 Q Prior to that, did you have any surveillance  
23 or observations made of Mr. Kohn or his apartment?

24 A No, sir.

25 Q Prior to that, were any reports in your



1           5           Czujak - cross

2 office, sir, of Mr. Kohn being a dealer or user of narcotics?

3 A       Not to my knowledge, sir.

4           Q       Prior to Mr. Walters going into the apartment,  
5 did you have Mr. Kohn's apartment under observation?

6 A       Just for about 10 minutes before Mr. Walters went in.

7           Q       Did anybody go in or out of that apartment  
8 during that period of 10 minutes, sir?

9 A       No, sir.

10          Q       Now, when you got into the apartment, sir,  
11 who placed Mr. Kohn under arrest?

12 A       Mr. Walsh did, sir.

13          Q       And where did that take place, sir?

14 A       Well, I guess when he told him he was under arrest  
15 we were --

16          Q       Where was that?

17 A       A few feet inside the door.

18          Q       About how many feet would you say, sir?

19 A       Three or four feet. Just inside the door.

20          Q       Sir?

21 A       Just inside the door.

22          Q       Now, at that particular point, were there any  
23 weapons or contraband present?

24 A       If you mean inside the door, sir, no.

25          Q       This doorway is a long room leads into a long  
room; is that correct, sir?

A       It's about a 15 foot living room, I would say.

1  
2 Q No. I am talking about the doorway. Did you  
3 hear Mr. Walsh's testimony?

4 A Yes, I did.

5 Q You were in Court here, were you not?

6 A Yes, sir.

7 ✓ Q Did you hear him testify? When he entered the  
8 doorway, there is a long foyer, about ten or twelve feet long  
9 and then at the end of that foyer is a living room?

10 A ✓ Yes, sir.

11 Q Is that correct, sir?

12 A ✓ Yes, sir.

13 ✓ Q Now, when you were in the doorway, sir,  
14 looking into the foyer, could you see any contraband in the  
15 living room?

16 A ✓ I could not, no, sir.

17 Q And were you the first in the apartment, sir?

18 A I was about the third in the apartment, sir.

19 Q A period of how many seconds or minutes passed  
20 from the first one went in until you went in?

21 A Very short time.

22 Q Almost falling over each other, right, sir?  
23 Sir, right?

24 A Well, it was one after the other. Let's put it that  
25 way.



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Q Who went in first?

3

A Mr. Walsh did.

4

Q Who went in after him?

5

A Mr. Greico.

6

Q And who went in after him?

7

A I did.

8

Q Who -- did you go after -- did you go ahead of  
Mr. Walsh?

9

A No, I don't think I did. No.

10

11

Q You're not sure of that, are you, sir?

12

A No. I could say that I did not go ahead of Mr. Walsh.

13

Q Did any agents precede Mr. Walsh into the  
living room before you got there with Mr. Kohn?

14

A I would say no, sir.

15

16

Q You are not sure of that either, are you?

17

A Not positive, no.

18

Q All right. Now, when you got into the living  
room, you didn't see this piece of luggage in the open view,  
did you?

19

20

A No, sir.

21

Q And Mr. Kohn said he knew nothing about it,  
right?

22

23

A That's right.

24

25

Q It was obviously after -- he said where is your

Czujak-Cross

search warrant, coming in to search my premises, right?

A He didn't say that. He just asked us do we have a search warrant.

Q And you said no?

A And we said no.

Q And it was at that time that Mr. Greico said we could get one, right?

A That's right.

Q And don't give me a hard time, or words to that effect?

MR. STECHEL: Objection. Objection to words of that effect. Let's hear what he said.

Q All right. Mr. Greico said he could get one, right?

A That's right.

Q And it was after that that Mr. Kohn said do what you want, right?

A Well, Mr. Greico added --

Q Yes or no.

MR. STECHEL: Will you let --

THE COURT: No, no. After that he said do what you want. There is a question to him. Is that what he said?

Q Yes or no, sir?



1  
2 A Yes.

3 Q Now, you gentlemen, expose your badges when  
4 you entered the apartment, did you not?

5 A Yes.

6 Q Would you not say that when Mr. Kohn made  
7 that remark and Mr. Greico said, we could get one, didn't  
8 he say that?

9 A He said we could get a search warrant. We would  
10 secure your premises and come back tomorrow morning --

11 Q So at that particular time, Mr. Kohn was  
12 submitting to authority, was he not?

13 MR. STECHEL: Objection. Objection.

14 This is hardly --

15 THE COURT: Yes. This is argumentative,  
16 in any event.

17 Q All right. At that time Mr. Kohn gave in to  
18 you gentlemen, right?

19 MR. STECHEL: Objection again.

20 THE COURT: Sustained. Argumentative.

21 Q All right. When -- you made Mr. Kohn know  
22 at that time that you were going to do what to the apartment,  
23 sir?

24 A We were going to secure it.

25 Q What does that mean, sir?

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A That means that we would leave an agent in the apartment until the agents came back --

Q With the search warrant?

A Yes.

Q And then you would take up the search after that, right?

A Correct.

Q In the meantime Mr. Kohn would be placed in custody, is that right?

A Yes.

MR. STECHEL: Objection. He's already in custody.

Q And you would take him from the apartment. I meant that, right? You wouldn't keep him there overnight, until you kept the search warrant, would you, sir?

A No, sir.

Q Now, each and every time that you asked Mr. Kohn questions, did you give him his rights?

A No, sir.

Q Each and every time he was asked questions by other agents, was he given his rights?

A I can't answer for the other agents, sir.

(Continued on the next page.)



GR/nc

Kohn

5AM4/ GR/nc

- 1
- 2 Q Now, do you have any of the statements made
- 3 by Mr. Kohn, verbatim, reduced to a written form?
- 4 A The statements he made at the time --
- 5 Q No. Answer my question, please.
- 6 A Yes.
- 7 Q Do you have them in written form?
- 8 A Yes.
- 9 Q Verbatim?
- 10 A As close as I -- I wrote them down as --
- 11 Q When did you write them down, sir?
- 12 ✓ A Within an hour after he said them.
- 13 Q And where did this take place?
- 14 ✓ A In Mr. Stechel's office and in front of Magistrate
- 15 Schiffman.
- 16 Q That was after he was arrested, right?
- 17 A That's correct.
- 18 Q But these are not -- do not pertain to the
- 19 statements made at the apartment, do they?
- 20 A Excuse me.
- 21 Q He made statements allegedly at the apartment,
- 22 too, right?
- 23 A Yes, sir.
- 24 Q Did you take those statements down verbatim?
- 25 A No, sir.

Q Now, the statements made before Mr. Stechel and Judge Schiffman, were his rights given to him before those statements were made?

A Before he gave the statement to Magistrate Schiffman, I would have to say I was almost certain that he was given his rights --

Q By whom?

A By Magistrate Schiffman.

Q Do you know if that procedure was taken down in any type of machine, sir?

A No, I couldn't answer that.

Q Did you give him his rights before Mr. Stechel, when he was interrogated in Mr. Stechel's office?

MR. STECHEL: Objection.

He was not interrogated.

Q He made a statement in Mr. --

A He made a statement.

MR. STECHEL: I object to the continual inclusion of evidence in the questions. It's improper. He's not a witness.

MR. SCHACHER: I stand corrected, Mr. Stechel. Please forgive me.

THE COURT: All right, come on.

Q As far as you are concerned, sir, who gave this



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3 Czujak - cross 119  
defendant his rights?  
A Mr. Walsh.  
Q Where at?  
A In the living room of the -- of his apartment.

MR. SCHACHER: No further questions.

REDIRECT EXAMINATION

BY MR. STECHEL:

Q Mr. Czujak, from the time that Mr. Walsh  
advised Mr. Kohn of his rights, until the conversation where  
he said, "It's in the closet, the bag, how long a period  
elapsed?"

A Just a few minutes.

Q And you said there was a conversation going  
on at that time?

A Yes. Yes. There was.

Q I want you to tell us very carefully what  
that --

MR. SCHACHER: I object. Not proper  
redirect. He's asking the same question brought  
out on direct examination.

MR. STECHEL: No. There was a period  
of -- I think previously testified ten or 15  
minutes of conversation which is a considerable  
length of time and I have a right to bring out

what occurred in that apartment.

MR. SCHACHER: I wish Mr. Stechel would make the statements he's making in court without taking on an antagonistic voice.

THE COURT: We are talking whether or not he's advised with his rights. There is nothing wrong, as far as I see, as far as the bag is concerned. That's not the problem in the case.

I don't know why you keep harping on it. He's advised of his rights at that time. Even as far as the search warrant is concerned, there is no problem with it.

MR. STECHEL: All right. Let me -- let me rest my case.

THE COURT: That is right.

What are we doing here?

MR. STECHEL: Unless there is any further recross.

THE COURT: The balance of it is what's bad. All right.

Step down, sir.

MR. STECHEL: Your Honor, at this time, the Government would rest for the purposes of



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Czujak - cross

the hearing.

THE COURT: All right.

MR. SCHACHER: The defendant rests, your Honor.

THE COURT: The defendant rests. All right.

The Court, upon the motion made by the defendant for two-pronged hearing; one being for matter of suppression of obtaining the contraband that was brought in from Morocco, through Kennedy Airport, and eventually discovered in the apartment of the defendant, and the second being as to whether or not the defendant was advised of his rights on the basis of Miranda, the Court, makes the finding and determination, as to the original discovery in the defendant's apartment of the hashish, which was found in the closet, the probable cause for -- for the purpose of going into that apartment to -- and the suppression, therefore, is denied.

As to the Miranda part --

(Continued next page.)

HS flws. 23

HS:pc  
take 6/1

1  
2 MR. SCHACHER: Your Honor, there may have  
3 been probable cause, but we also have a question  
4 of the search being incidental to the arrest --

5 THE COURT: I am getting to that.

6 MR. SCHACHER: I am sorry.

7 THE COURT: As to the first part, the  
8 Court's finding is that it must be denied.  
9 There was a consent as to the bag itself being  
10 in the closet.

11 Secondly --

12 MR. SCHACHER: May I please --

13 THE COURT: This is my decision.

14 MR. SCHACHER: I am sorry.

15 MR. STECHEL: I am sorry if -- we got  
16 a little bit warmed up there.

17 THE COURT: Once I make a decision,  
18 that is the end of it.

19 You may take an exception to it. I  
20 make the decision. You know me a long time.

21 MR. SCHACHER: I am not finding  
22 fault with that, Judge.

23 THE COURT: That is it.

24 MR. SCHACHER: I apologize.

25 THE COURT: As to the second part of



2 1  
2 the Miranda hearing, I find that the defendant  
3 was advised of his rights.

4 As to making any statements to the  
5 agent at that time, the Court finds that they  
6 would be admissible.

7 But as to any other statement subsequent  
8 to that, the Court would find that he was not  
9 continuously advised of his rights and those  
10 statements would be suppressed.

11 As to the finding of the marijuana, the  
12 Court finds that that was not properly found.  
13 A search warrant should have been obtained.

14 That is as to the brick of marijuana  
15 found in the dresser drawer.

16 MR. STECHEL: The stuff in open view --

17 ✓ THE COURT: That you could take. I am  
18 talking about the marijuana in the dresser  
19 drawer, that is suppressed.

20 ✓ The scale is likewise suppressed.

21 MR. SCHACHER: What about the valise  
22 containing the hashish?

23 THE COURT: That is denied as far as your  
24 motion is concerned.

25 MR. SCHACHER: I respectfully except.

THE COURT: Fine.

1  
2 MR. SCHACHER: Your Honor, what about the  
3 search incidental to the arrest?

4 If we believe Mr. Walter's testimony here,  
5 and --

6 THE COURT: I have made my decision.  
7 If I gave you a written decision, you  
8 wouldn't come back tomorrow morning and say,  
9 "I don't like it," would you?

10 MR. SCHACHER: I was hoping that your  
11 Honor would read United States against Matt  
12 before you came to a determination.

13 THE COURT: I read it.

14 MR. SCHACHER: If you read that case --

15 THE COURT: You have one-half of your  
16 motion. You cannot win everything. The balance  
17 of it must be denied.

18 MR. SCHACHER: You are denying the appli-  
19 cation to suppress the hashish?

20 THE COURT: That is right.

21 I am denying your motion as to the  
22 imported hashish. I am granting it as to all  
23 the others, except as to the marijuana found  
24 on the table in open view.

25 MR. SCHACHER: I most respectfully



1  
2 take an exception.

3 MR. STECHEL: The Government is ready for  
4 trial.

5 THE COURT: We have to see what is going  
6 to happen with the trial before me. Come back  
7 tomorrow morning.

8 THE CLERK: Court stands adjourned until  
9 tomorrow morning.

10 \* \* \* \* \*

I N D E X

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>V.D.</u>
Trevor A. Walters	4	36			25
Edward F. Walsh	61	65			
Robert J. Czujak	84	105	119		

E X H I B I T S

<u>Government's Exhibit No.</u>	<u>Description</u>	<u>For Id.</u>	<u>In Ev.</u>
1 - 4	Documents	7	
1, 2, 4	Previously marked		8
3	" "		10
5,6	2 articles	13	15
8	Document	70	
9	Scale	94	
10	Bag	94	
11	Bag	95	

\* \* \* \* \*

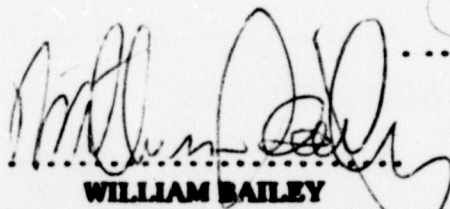


**AFFIDAVIT OF PERSONAL SERVICE**

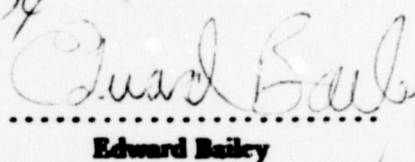
**STATE OF NEW YORK,  
COUNTY OF RICHMOND ss.:**

**EDWARD BAILEY** being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 25 day of MARCH, 19 74 at No. 225 CADILLAC PARK EAST deponent served the within APPENDIX upon U.S. AIR FORCE DIST. OF N.Y. the APPENDIX herein, by delivering a true copy thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,  
this 25 day of MARCH 19 74

  
.....  
**WILLIAM BAILEY**

Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1973

  
.....  
**Edward Bailey**